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ABSTRACT

This participant's manual is part of a training program sponsored by IL NET, a national training and technical assistance project working to strengthen the independent living movement. It is intended to teach participants what the Individuals with Disabilities Education Act (IDEA) law and regulations require, how to do transition planning and the development of an Individualized Education Program (IEP), what the right to learn really means and its relevance to individual state regulations, how maximum integration can take place, and how disability rights advocates can affect change in the education system. The manual includes: (1) selected provisions of IDEA amendments of 1997; (2) topic briefs for parents and their advocates that address eligibility, disability related laws, related services, the free appropriate public education requirement, IEPs, student placement, notice and consent, students who are limited English speaking, homeless children, peer disability harassment, and educational records; (3) students with disabilities and the right to due process in school discipline; (4) including students with disabilities in standards based education reform; (5) information on nondiscrimination in programs and activities; (6) requirements of the Family Educational Rights and Privacy law; and (7) parent

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IL NET

an ILRU/NCIL National Training and Technical Assistance Project

Expanding the Power of the Independent Living Movement

ED 456 590

YOUTH FOCUS: IMPLEMENTING IDEA

A National Conference

Participant's Manual

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June 4-6, 2001
Cleveland, OH

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Youth Focus: Implementing IDEA
A National Conference

Participant's Manual
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Youth Focus: Implementing IDEA

AGENDA

Monday, June 4

8:30	Continental Breakfast
9:00 – 9:15	Housekeeping and Introductions
9:15 – 10:30	Basic Legal Framework
10:30-10:45	Break
10:45-noon	Right to Learn – Accountability
noon-1:30	Lunch on Your Own
1:30 – 3:15	Right to Learn continued
3:15 – 3:30	Break
3:30 – 5:00	Individual Education Plan (IEP) – Breakout Groups

Tuesday, June 5

8:30	Continental Breakfast
9:00 –10:00	Group Feedback – How Would you Proceed Now?
10:00-10:30	Procedural Safeguards
10:30-10:45	Break
10:45-noon	Discipline
noon- 1:30	Lunch on Your Own
1:30 – 2:15	Behavioral Assessment – Scenario
2:15 – 3:15	Hot topics
3:15 – 3:30	Break
3:30 – 5:00	Transition Planning/IEP Process – Breakout Groups

Wednesday, June 6

8:30	Continental Breakfast
9:00 – 9:30	Group Reports from Day Two
9:30 –10:00	Best Practices
10:00-10:30	Systems Advocacy Opportunities
10:30-10:45	Break
10:45-11:00	Resources and Contacts
11:00-noon	Right to Compensatory Services and Relief
noon – 1:30	Lunch on Your Own
1:30 – 1:45	FERPA – Family Education Rights & Privacy Act
1:45 – 2:00	Transfer of Student Rights at Age of Majority
2:00 – 2:30	When Student and Parents Disagree
2:30 – 3:00	Q & A
3:00	Training Ends

About the Trainers

Kathleen Boundy

Kathleen Boundy, co-director with Paul Weckstein of the Center for Law and Education, has an extensive background in education law based on providing legal support and technical assistance to attorneys and advocates representing low-income children and youth. An attorney with CLE for more than 20 years, Ms. Boundy has, in particular, played a significant role through legislation, policy development and litigation in implementing and enforcing the rights of students with disabilities, including to improve educational outcomes under the Individuals with Disabilities Education Act, as amended, and Section 504 of the Rehabilitation Act of 1973. Ms. Boundy has an M.A.T. degree in history, which she taught at a large urban public high school prior to earning her law degree from Northeastern University School of Law.

Elizabeth Hollowell

Elizabeth is a freshman at Gallaudet University in Washington, D.C. She chairs Gallaudet's Student Council's Disability Committee. Elizabeth attended public school in Virginia Beach where she was active in drama and other school clubs. Elizabeth was extensively involved in her IEP development from elementary school to graduation.

Maureen Hollowell

Maureen is the Director of Education Advocacy at the Endependence Center, Inc. in Norfolk, Virginia. She advocates with students pursuing advocacy issues. Maureen chairs the NCIL IDEA Committee and was involved with the Congressional process in 1997 that resulted in amendments to IDEA.

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ABOUT ILRU

The Independent Living Research Utilization (ILRU) Program was established in 1977 to serve as a national center for information, training, research, and technical assistance for independent living. In the mid-1980's, it began conducting management training programs for executive directors and middle managers of independent living centers in the U.S.

ILRU has developed an extensive set of resource materials on various aspects of independent living, including a comprehensive directory of programs providing independent living services in the U.S. and Canada.

ILRU is a program of TIRR, a nationally recognized, free-standing rehabilitation facility for persons with physical disabilities. TIRR is part of TIRR Systems, a not-for-profit corporation dedicated to providing a continuum of services to individuals with disabilities. Since 1959, TIRR has provided patient care, education, and research to promote the integration of people with physical and cognitive disabilities into all aspects of community living.

ABOUT NCIL

Founded in 1982, the National Council on Independent Living is a membership organization representing independent living centers and individuals with disabilities. NCIL has been instrumental in efforts to standardize requirements for consumer control in management and delivery of services provided through federally-funded independent living centers.

Until 1992, NCIL's efforts to foster consumer control and direction in independent living services through changes in federal legislation and regulations were coordinated through an extensive network and involvement of volunteers from independent living centers and other organizations around the country. Since 1992, NCIL has had a national office in Arlington, Virginia, just minutes by subway or car from the major centers of government in Washington, D.C. While NCIL continues to rely on the commitment and dedication of volunteers from around the country, the establishment of a national office with staff and other resources has strengthened its capacity to serve as the voice for independent living in matters of critical importance in eliminating discrimination and unequal treatment based on disability.

Today, NCIL is a strong voice for independent living in our nation's capital. With your participation, NCIL can deliver the message of independent living to even more people who are charged with the important responsibility of making laws and creating programs designed to assure equal rights for all.

ABOUT THE IL NET

This training program is sponsored by the IL NET, a collaborative project of the Independent Living Research Utilization (ILRU) of Houston and the National Council on Independent Living (NCIL).

The IL NET is a national training and technical assistance project working to strengthen the independent living movement by supporting Centers for Independent Living (CILs) and Statewide Independent Living Councils (SILCs).

IL NET activities include workshops, national teleconferences, technical assistance, on-line information, training materials, fact sheets, and other resource materials on operating, managing, and evaluating centers and SILCs.

The mission of the IL NET is to assist in building strong and effective CILs and SILCs which are led and staffed by people who practice the independent living philosophy.

The IL NET operates with these objectives:

- Assist CILs and SILCs in managing effective organizations by providing a continuum of information, training, and technical assistance.

- Assist CILs and SILCs to become strong community advocates/change agents by providing a continuum of information, training, and technical assistance.

- Assist CILs and SILCs to develop strong, consumer-responsive services by providing a continuum of information, training, and technical assistance.

YOUTH FOCUS: IMPLEMENTING IDEA
June 4-6, 2001 Cleveland, Ohio

Learning objectives:

Participants will learn:

1. What the Individuals with Disabilities Education Act law and regulations say
2. How the law and regs translate into identification, eligibility and evaluation
3. How to do transition planning and development of an IEP
4. What the "right to learn" really means and its relevance to individual state regulations
5. How maximum integration can take place
6. How disability rights advocates can effect change in the education system

SELECTED PROVISIONS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

SELECTED PROVISIONS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

``SEC. 612. STATE ELIGIBILITY.

``(a) In General.--A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

``(1) Free appropriate public education.--

``(A) In general.--A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

***

``(16) Performance goals and indicators.--The State--

``(A) has established goals for the performance of children with disabilities in the State that--

``(i) will promote the purposes of this Act, as stated in section 601(d); and

``(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

``(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

``(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

``(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

``(17) Participation in assessments.--

``(A) In general.--Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency--

``(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

``(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

``(B) Reports.--The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled children, the following:

``(i) The number of children with disabilities participating in regular assessments.

``(ii) The number of those children participating in alternate assessments

``(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

``(II) Data relating to the performance of children described under subclause (I) shall be disaggregated--

``(aa) for assessments conducted after July 1, 1998; and

``(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

***

``SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

***

``(j) Disciplinary Information.--The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and
any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

``SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

``(a) Evaluations and Reevaluations.--

``(1) Initial evaluations.--

``(A) In general.--A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

``(B) Procedures.--Such initial evaluation shall consist of procedures--

``(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and
``(ii) to determine the educational needs of such child.

``(C) Parental consent.--

``(i) In general.--The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such

child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

``(ii) Refusal.–If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

``(2) Reevaluations.–A local educational agency shall ensure that a reevaluation of each child with a disability is conducted--

``(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

``(B) in accordance with subsections (b) and (c).

``(b) Evaluation Procedures.--

``(1) Notice.–The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

``(2) Conduct of evaluation.--In conducting the evaluation, the local educational agency shall--

``(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

``(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

``(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

``(3) Additional requirements.--Each local educational agency shall ensure that--

``(A) tests and other evaluation materials used to assess a child under this section--

``(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and
``(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

``(B) any standardized tests that are given to the child--

``(i) have been validated for the specific purpose for which they are used;
``(ii) are administered by trained and knowledgeable personnel; and
``(iii) are administered in accordance with any instructions provided by the producer of such tests;

``(C) the child is assessed in all areas of suspected disability; and

``(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

``(4) Determination of eligibility.--Upon completion of administration of tests and other evaluation materials--

``(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph

(5); and

``(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

``(5) Special rule for eligibility determination.--In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

``(c) Additional Requirements For Evaluation and Reevaluations.--
``(1) Review of existing evaluation data.--As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall--

``(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

``(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

``(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;
``(ii) the present levels of performance and educational needs of the child;
``(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
``(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate,

as appropriate, in the general curriculum.

``(2) Source of data.--The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

``(3) Parental consent.--Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

``(4) Requirements if additional data are not needed.--If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency--

``(A) shall notify the child's parents of--

``(i) that determination and the reasons for it; and

``(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

``(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

``(5) Evaluations before change in eligibility.--A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

``(d) Individualized Education Programs.--

``(1) Definitions.--As used in this title:

``(A) Individualized education program.--The term `individualized education program' or `IEP ' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

``(i) a statement of the child's present levels of educational performance, including--

``(I) how the child's disability affects the child's involvement and progress in the general curriculum; and

``(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

``(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to--

``(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

``(II) meeting each of the child's other educational needs that result from the child's disability;

``(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child–

``(I) to advance appropriately toward attaining the annual goals;

``(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

``(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

``(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

``(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

``(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of--

``(aa) why that assessment is not appropriate for the child; and

``(bb) how the child will be assessed;

``(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

``(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

``(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

``(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

``(viii) a statement of--

``(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

``(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their non-disabled children's progress, of--

``(aa) their child's progress toward the annual goals described in clause (ii); and

``(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

``(B) Individualized education program team.--The term `individualized education program team' or `IEP Team' means a group of individuals composed of--

``(i) the parents of a child with a disability

"(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

``(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

``(iv) a representative of the local educational agency who--

``(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

``(II) is knowledgeable about the general curriculum; and ``(III) is knowledgeable about the availability of resources of the local educational agency;

``(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in

clauses (ii) through (vi);
``(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
``(vii) whenever appropriate, the child with a disability.

``(2) Requirement that program be in effect.--

``(A) In general.--At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

``(B) Program for child aged 3 through 5.--In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is--

``(i) consistent with State policy; and
``(ii) agreed to by the agency and the child's parents.

``(3) Development of IEP.--

``(A) In general.--In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

``(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and
``(ii) the results of the initial evaluation or most recent evaluation of the child.

``(B) Consideration of special factors.--The IEP Team shall--

``(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

``(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

``(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

``(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

``(v) consider whether the child requires assistive technology devices and services.

``(C) Requirement with respect to regular education teacher.--The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

``(4) Review and revision of IEP.--

``(A) In general.--The local educational agency shall ensure that, subject to subparagraph (B), the IEP

Team--

``(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

``(ii) revises the IEP as appropriate to address--

``(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

``(II) the results of any reevaluation conducted under this section;

``(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

``(IV) the child's anticipated needs; or

``(V) other matters.

``(B) Requirement with respect to regular education teacher.--The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

``(5) Failure to meet transition objectives.--If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

``(6) Children with disabilities in adult prisons.--

``(A) In general.--The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

``(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

``(ii) The requirements of sub clauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will

end, because of their age, before they will be released from prison.

``(B) Additional requirement.--If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

``(e) Construction.--Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

``(f) Educational Placements.--Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

``SEC. 615. PROCEDURAL SAFEGUARDS.

``(j) Maintenance of Current Educational Placement.--Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

``(k) Placement in Alternative Educational Setting.--

``(1) Authority of school personnel.--

``(A) School personnel under this section may order a change in the placement of a child with a disability--

``(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

``(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if–

``(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

``(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

``(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)--

``(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

``(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

``(2) Authority of hearing officer.--A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

``(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

``(B) considers the appropriateness of the child's current placement;

``(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

``(D) determines that the interim alternative

educational setting meets the requirements of paragraph (3)(B).

``(3) Determination of setting.--

``(A) In general.--The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

``(B) Additional requirements.--Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall--

``(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

``(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

``(4) Manifestation determination review.--

``(A) In general.--If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children--

``(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

``(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship

between the child's disability and the behavior subject to the disciplinary action.

``(B) Individuals to carry out review.--A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

``(C) Conduct of review.--In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team--

``(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--
``(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
``(II) observations of the child; and
``(III) the child's IEP and placement; and
``(ii) then determines that--
``(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids, services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
``(II) the child's disability did not impair the ability of the child to understand the impact and consequence of the behavior subject to disciplinary action; and
``(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

``(5) Determination that behavior was not manifestation of disability.--

``(A) In general.--If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

``(B) Additional requirement.--If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

``(6) Parent appeal.--

``(A) In general.--

``(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

``(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

``(B) Review of decision.--

``(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

``(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

``(7) Placement during appeals.--

``(A) In general.--When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim

alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

``(B) Current placement.--If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

``(C) Expedited hearing.--

``(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

``(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

``(8) Protections for children not yet eligible for special education and related services.--

``(A) In general.--A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

``(B) Basis of knowledge.--A local educational agency shall be deemed to have knowledge that a child is a child with a disability if--

> ``(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;
> ``(ii) the behavior or performance of the child demonstrates the need for such services;
> ``(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or
> ``(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

``(C) Conditions that apply if no basis of knowledge.–

> ``(i) In general.--If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).
> ``(ii) Limitations.--If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and

related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

``(9) Referral to and action by law enforcement and judicial authorities.--

``(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

``(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

``(10) Definitions.--For purposes of this subsection, the following definitions apply:

``(A) Controlled substance.--The term `controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
``(B) Illegal drug.--The term `illegal drug '--

``(i) means a controlled substance; but
``(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

``(C) Substantial evidence.--The term `substantial evidence' means beyond a preponderance of the evidence.

``(D) Weapon.--The term `weapon' has the meaning given the term `dangerous weapon' under paragraph (2) of

the first subsection (g) of section 930 of title 18, United States Code.

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Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

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Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#1 – The Basic Legal Framework

This topic brief introduces the laws most relevant to high quality public education for children with disabilities. It focuses on the three federal laws that most directly shape the education rights of children with disabilities: the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. It then briefly identifies several other relevant laws, including Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1964, Title IX of the Education Amendments of 1972, Title I of the Elementary And Secondary Education Act, the Carl D. Perkins Vocational and Applied Technology Education Act, and the Family Educational Rights and Privacy Act.

A. The Individuals with Disabilities Education Act, or IDEA

Congress enacted Public Law 94-142, the Education for All Handicapped Children Act in 1975 in response to the widespread failure of public school systems to provide appropriate — or in many cases, any — education to children with disabilities. The Act, which was renamed the Individuals With Disabilities Education Act ("IDEA") in 1990, provides states with funds to assist in providing specialized educational services for students with disabilities. In return, a state accepting these funds — as well as local school systems and other public agencies in the state involved in educating children — must comply with the Act's substantive and procedural requirements. IDEA was last substantially amended in 1997.[1]

The Office of Special Education Programs or "OSEP," a part of the Office of Special Education and Rehabilitative Services ("OSERS") within the U.S. Department of Education, administers IDEA. OSEP is also responsible for ensuring compliance with the Act including, when necessary, taking enforcement action against states that are out of compliance. In addition, state departments of education are responsible for ensuring that local school districts (as well as other public, and in certain instances, private, agencies in the state that provide educational services) comply with IDEA. The Act is also enforced by parents and students bringing administrative complaints, requesting due process hearings and filing lawsuits.

1. Eligibility

Only a student who is a "child with a disability" within the meaning of IDEA is entitled to its protections. For purposes of IDEA,

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[1]. *See* Public Law 105-17, 111 Stat. 37 (June 4, 1997), codified at 20 U.S.C. §1400 *et seq.*.

> "[t]he term `child with a disability' means a child with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance..., orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities...who *by reason thereof needs special education and related services*."[2]

The regulations implementing IDEA define each of these conditions in detail.[3]

At the discretion of a state and the local school system involved, the term "child with a disability" may also include 3 through 9 year olds who are "(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in...physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof need special education and related services."[4]

All children who have one of these disabilities and need special education and related services as a result are protected by IDEA and are eligible for the education it guarantees, *even if they are advancing from grade to grade*.[5] Similarly, all "children with disabilities" are entitled to education and services regardless of the severity of their disabilities.[6] *IDEA does not allow for the possibility that some children are too severely disabled to be served*; states and school systems may not refuse to provide educational services to eligible children on the ground that a child is too severely disabled to benefit from them.[7]

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[2]. 20 U.S.C. §1401(3)(A) (emphasis added).

[3]. *See* 34 C.F.R. §§300.7(c), 300.541. The IDEA regulations were substantially amended in March 1999. Note that 34 C.F.R. §300.7(c)(9) now explicitly includes attention deficit disorder and attention deficit hyperactivity disorder as examples of conditions that may trigger IDEA eligibility under the category of "other health impairment."

[4]. 20 U.S.C. §1401(3)(B); 34 C.F.R. §300.7(b). Note that a local school system may not adopt developmental delay as a basis for IDEA eligibility unless the state, too, has done so. *See* 34 C.F.R. §300.313(4).

[5]. 34 C.F.R. §300.121(e)(1).

[6]. 20 U.S.C. §1412(a)(3)(A).

[7]. *Id. See also, e.g., Timothy W. v. Rochester School District*, 875 F.2d 954 (1st Cir. 1989), *cert. denied*, 110 S. Ct. 519.

2. Age Ranges

IDEA compels states to make a free appropriate public education available to all children with disabilities aged three through twenty-one years *unless*, with respect to 3 through 5 year olds and 18 through 21 year olds, this requirement would be inconsistent with a state law or practice or a court order.[8] Once a state, school district or other public agency undertakes to serve 3 through 5 or 18 through 21 year olds, however, all of IDEA's substantive and procedural requirements apply.[9]

A 1997 amendment to IDEA allows states to pass laws denying IDEA services to some 18 through 21 year-olds who are incarcerated in adult correctional facilities. Such state laws may exclude these youth from services if, in their last educational placement before being incarcerated, they were not identified as a "child with a disability" under IDEA, and did not have an IDEA "individualized education program."[10] These youth may be denied IDEA services *only* if the state actually has passed a law excluding them.[11]

3. End of Eligibility

A student's eligibility for services under IDEA may end in one of three ways. First, eligibility may end if a proper evaluation determines that he or she no longer meets the definition of a "child with a disability" – either because the student no longer has one of the listed disabilities, or because even though he or she still has one of them, the student no longer needs special education and related services as a result. Secondly, eligibility ends when a youth reaches the maximum age of entitlement (see above).

Finally, eligibility also ends – regardless of whether a youth has reached the maximum age for services – once a student has *graduated* with a *regular* high school diploma.[12] "Graduation" *without* a regular diploma, for example, with a certificate of completion or attendance, or with a "special education" diploma, does *not* end a student's right to services.

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[8]. 20 U.S.C. §1412(a)(1)(B). The U.S. Department of Education regulations implementing IDEA further explain this requirement. *See* 34 C.F.R. §300.300.

[9]. 34 C.F.R. §300.300(b)(4).

[10]. 20 U.S.C. §1412(a)(1)(B)(ii); 34 C.F.R. 300.122(a)(2).

[11]. 34 C.F.R. §300.122(b)(2).

[12]. 34 C.F.R. §300.122(a)(3).

B. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 ("§504") is a civil rights statute designed to prohibit discrimination on the basis of disability. Modeled after Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 — which address racial or national origin and sex discrimination, respectively — it applies to recipients of federal funds. Section 504 as amended[13] provides in relevant part that:

> "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..."[14]

Because virtually all local schools and school districts receive federal funds of some sort, §504 provides an additional tool for ensuring that school-age children with disabilities receive the education to which they are entitled. Section 504 is enforced through administrative complaints and compliance reviews by the U.S. Department of Education's Office for Civil Rights or "OCR," and also through lawsuits by individuals who allege deprivation of their §504 rights.

1. Individuals Protected

For purposes of §504, an "individual with a disability" is one who

> "..(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."[15]

"Major life activities" means activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.[16] Virtually

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[13]. 29 U.S.C. §794.

[14]. 29 U.S.C. §794(a).

[15]. 29 U.S.C. §705(20)(B). The term "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin or endocrine systems, as well as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 34 C.F.R. §104.3(j)(2)(i).

[16]. These examples of "major life activities" are listed in the §504 regulations. *See* 34 C.F.R. §104.3(j)(2)(ii). Courts have found other activities to be "major life activities" for §504 purposes as well. *See, e.g., Doe v. New York University*, 666 F.2d 761, 775 (2nd Cir. 1981) (psychiatric impairment limited medical student's major life activity of handling stressful situations such as those encountered in medical training; court noted her prior academic achievements, and lack of learning difficulties); *Doe v. District of Columbia*, 796 F. Supp. 559 (D.D.C. 1992) (plaintiff who has HIV-positive was limited in the major life activities of "procreation, sexual contact and normal [sic] social relationships"); *Perez v. Philadelphia*

all children eligible for special education and related services under IDEA fall within this definition, and so are protected by §504 as well.

Because the §504 definition of an "individual with a disability," however, is broader than the IDEA definition of a "child with a disability," §504 protects many children who are *not* IDEA-eligible. For example, a child who has an "other health impairment," such as epilepsy or AIDS, but who does not need specialized instruction, is not a "child with a disability" within the IDEA definition. Such a child is, nonetheless, protected against discrimination by §504 and its implementing regulations if the condition "substantially limits" a "major life activity." Similarly, a child who does not have any of the kinds of disabilities required for IDEA eligibility might nonetheless have an impairment that substantially limits a major life activity— or have a history of such an impairment, or be regarded as having such an impairment — and so be covered by §504.[17]

In order to be protected from discrimination by §504, an "individual with a disability" must be "otherwise qualified." For purposes of public preschool, elementary or secondary school services and activities, a child or student is "otherwise qualified" if he or she is:

- of an age during which individuals who do not have a disability are provided with such services, or
- of any age during which it is mandatory under state law to provide such services to individuals with disabilities, or
- is someone IDEA requires the state to provide with a free appropriate public education.[18]

2. Operation and Reach of §504

Regulations promulgated by the U.S. Department of Education interpret and implement §504's broad ban on discrimination as it applies to recipients of Department of Education funds.[19] In regard to preschool, elementary and secondary education,

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Housing Authority, 677 F. Supp. 357 (E.D. Penn. 1987), *aff'd. without opinion*, 841 F.2d 1120 (3rd Cir. 1988) (back pain affected major life activities of walking, sitting, standing, driving, caring for home and child, and engaging in leisure pastimes).

[17]. For example, a student who has been erroneously classified as having mental retardation or who has a record of "incorrigible" behavior might be "regarded as having...an impairment" or have "a record of...an impairment" for purposes of §504. In addition, a child who does not have any of the disabilities listed in IDEA might nonetheless have an actual, current "impairment" for §504 purposes. A child who is HIV positive but asymptomatic — and so not "other health impaired" as defined by IDEA — would fall within this category. *See Bragdon v. Abbott*, 524 U.S. 624 (1998).

[18]. 34 C.F.R. §104.3(k)(2).

[19]. The Department's §504 regulations are codified at 34 C.F.R. part 104.

these regulations operate in two basic ways: (1) by generally prohibiting certain practices as illegal discrimination, and (2) by compelling school systems to take certain affirmative steps to ensure that all students with disabilities receive a free appropriate public education.

Free Appropriate Public Education Like IDEA, the regulations implementing §504 require public school systems to provide a free appropriate public education in the least restrictive environment regardless of the nature or severity of a student's disability.[20] Unlike IDEA, a free appropriate public education under §504 may include "regular" education as well as "special" education, along with any needed related aids and services.[21] Many specific §504 requirements concerning issues such as the evaluation and placement of pupils with disabilities, the components of a free appropriate public education, the circumstances under which a student with disabilities may be removed from the regular education setting, and procedural safeguards mirror or complement IDEA mandates.*

Prohibited Discriminatory Practices In addition to establishing specific requirements for preschool, elementary and secondary school programs, the U.S. Department of Education's §504 regulations ban all recipients of federal Department of Education funds from engaging in certain discriminatory practices. The §504 regulations of all other federal agencies contain comparable provisions. Key illegal practices include:

- denying a "qualified" individual with a disability the opportunity to participate in or benefit from an aid, benefit or service;[22]
- affording a "qualified" individual with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others;[23]
- providing a "qualified" individual with a disability with an aid, benefit or service that is not as effective as that provided to others;[24]
- providing different or separate aid, benefits or services to individuals with disabilities or to any class of individuals with disabilities unless necessary to provide them with aid, benefits, or services that are as effective as those

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[20]. 34 C.F.R. §§104.33(a), 104.34(a).

[21]. 34 C.F.R. §104.33(b).

* Section 504 also protects students who attend private day care, preschool, elementary and secondary schools that receive federal funds, or that are used as placements by public school systems, from disability-based discrimination. The §504 rights of these students vary depending upon the kinds of programs and services offered and the circumstances under which a particular student has come to attend.

[22]. 34 C.F.R. §104.4(b)(1)(i).

[23]. 34 C.F.R. §104.4(b)(1)(ii).

[24]. 34 C.F.R. §104.4(b)(1)(iii).

provided to others;[25]

- denying a "qualified" individual with a disability the benefits of any program or activity, excluding him or her from participation, or otherwise subjecting him or her to discrimination because a recipient's facilities are inaccessible to or unusable by people with disabilities;[26]
- otherwise limiting a "qualified" individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service;[27]
- using policies or practices that have the effect of subjecting children with disabilities to discrimination, or of defeating or substantially impairing the objectives of the education program for students with disabilities.[28]

These broad prohibitions have been used successfully to challenge a wide variety of school practices not specifically addressed by other §504 regulations or IDEA.[29]

C. The Americans with Disabilities Act, or ADA

The Americans with Disabilities Act ("ADA") was passed by Congress in 1990. The ADA is divided into five parts or "Titles." Most relevant to quality public education

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[25]. 34 C.F.R. §104.4(b)(1)(iv).

[26]. 34 C.F.R. §104.21. This provision should be read along with 34 C.F.R. §§104.22, 104.23, which delineate the circumstances under which recipients need or need not remove architectural barriers in order to meet this requirement.

[27]. 34 C.F.R. §104.4(b)(1)(vii).

[28]. 34 C.F.R. §104.4(b)(4).

[29]. *See, e.g., Orange County (FL) School District*, 28 IDELR [Individuals with Disabilities Law Report] 492 (OCR 11/18/97) (shortened school day due to transportation schedule); *Pocantico Hills (NY) Central School District*, 20 IDELR 265 (OCR 5/3/93) (exclusion of child with learning disabilities and behavioral manifestations from summer camp program); *Mt. Gilead (OH) Exempted Village School District*, 20 IDELR 765 (OCR 8/13/93) (withholding complete information about field trips from parents of children with disabilities); *Garaway (OH) Local School District*, 17 EHLR [Education of the Handicapped Law Report] 237 (OCR 9/13/90) (carrying mobility impaired student on and off school bus rather than providing accessible transportation); *Sumter County (SC) School District #17*, 17 EHLR 193 (OCR 9/28/90) (disabled student disciplined more harshly than others); *Duchesne County (UT) School District*, 17 EHLR 240 (OCR 9/13/90) (providing special education students with shorter school day and longer bus rides than regular education students); *Nashville-Davidson County (TN) Schools*, 16 EHLR 379 (OCR 12/21/89) (refusing to enroll students with disabilities in particular vocational education program); *New Carlisle-Bethel Local School District*, EHLR 257:477 (OCR 1/30/84) (inaccessible classrooms prevented mobility impaired student from taking certain classes); *Tucson (AZ) Unified School District No. 1*, EHLR 352:47 (OCR 2/16/84) (failure to utilize adaptive equipment in order to make driver's education course accessible to mobility impaired students); *Fayette County (KY) School District*, EHLR 353:279 (OCR 3/1/89) (admission to after school program); *Jefferson County (KY) School District*, EHLR 353:176 (OCR 9/19/88) (admission to summer enrichment program); *Carbon-Lehigh (PA) Intermediate School District #21*, EHLR 352:108 (OCR 9/20/85) (offering only limited electives in segregated school for emotionally disturbed students in comparison to range of electives available to regular education students).

for students with disabilities is Title II, which prohibits discrimination by public entities -- such as public schools, school systems, state departments of education, etc. -- *regardless* of whether they receive federal funds.[30] In the context of public education, the ADA is enforced by the U.S. Department of Education's Office for Civil Rights, as well as through lawsuits filed by students whose rights have been violated.

1. Individuals Protected

Like §504, Title II of the ADA protects only "qualified" individuals from discrimination, stating that

> "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[31]

The ADA definition of an "individual with a disability" parallels the §504 definition, discussed above.[32]

> A "qualified" individual with a disability under Title II of the ADA is someone who, "*with or without* reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the *essential* eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."[33]

Public entities such as schools must make "reasonable modifications," remove "barriers," and provide "auxiliary aids and services" as needed to enable an individual to meet "essential eligibility requirements," and thus be a "qualified" individual with a disability.

2. Operation and Reach

As is the case with §504, the ADA statute is implemented by regulations that provide further detail about what constitutes unlawful discrimination. The Title II ADA regulations were modeled on the §504 regulations, and prohibit all of the discriminatory

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[30]. The other Titles of the ADA address employment (Title I), public accommodations and services operated by private entities (Title III), telecommunications (Title IV) and miscellaneous other issues (Title V).

[31]. 42 U.S.C. §12132.

[32]. *See* 42 U.S.C. §12102(2).

[33]. 42 U.S.C. §12131(2) (emphasis added).

practices made illegal under §504.[34] The ADA regulations also make *explicit* some obligations that are *implicit* in the older §504 regulations. For example, the ADA regulations state that public entities, including schools, must make reasonable changes in their policies, practices and procedures when necessary to avoid disability discrimination (unless the changes would "fundamentally alter" the nature of the program in question), and may not use eligibility criteria that screen out or tend to screen out an individual with a disability, or individuals with a particular kind of disability, from full and equal participation in programs, unless the criteria are necessary to the program.[35]

D. Related Laws

While IDEA, §504 and, to a lesser extent, the ADA are the focus of this booklet, they are not the only laws relevant to the right of students with disabilities to a quality public education. Other laws of which parents and advocates should be aware include the following.

State "special education" laws Virtually all states have enacted their own special education statutes and regulations. These state laws supplement IDEA, and often fill in many details not addressed by federal law. State law may not be used to diminish IDEA or other federal rights. State statutes or regulations that give students and parents *greater* protection than does IDEA are permissible; statutes or regulations that undermine IDEA protections are not.

Title VI of the Civil Rights Act of 1964 Title VI prohibits recipients of federal funds from discriminating on the basis of race, ethnicity or national origin.[36] This includes discrimination on the basis of a child's limited English proficiency.[37]

Equal Educational Opportunities Act of 1974 The Equal Educational Opportunities Act[38] deals primarily with illegal racial segregation in school assignment, and legal remedies to address it. Another important provision requires states and local school districts to take "appropriate action to overcome language barriers that impede equal participation by...students in...instructional programs,"[39] augmenting Title VI as a source of rights for children who are limited English proficient.

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[34]. *See* 28 C.F.R. §35.130(b).

[35]. 28 C.F.R. §35.130(b)(7), (8).

[36]. 42 U.S.C. §2000d; *see also* 34 C.F.R. part 100 (U.S. Department of Education/Office for Civil Rights regulations).

[37]. *See Lau v. Nichols*, 414 U.S. 563 (1974).

[38]. 20 U.S.C. §1701 *et seq.*

[39]. 20 U.S.C. §1703(f).

Title IX of the Education Amendments of 1972 Title IX prohibits recipients of federal education funds from discriminating on the basis of sex.[40] This includes discrimination against teens who are pregnant or parenting.[41]

Title I of the Elementary and Secondary Education Act Title I[42] is the largest federal spending program for elementary and secondary education, channeling funds to areas with high concentrations of low-income students to promote school reform. The Title I law contains numerous program requirements for participating schools, all of which focus on assisting students to attain the challenging academic standards set by the state for all students. Title I explicitly identifies students with disabilities as intended beneficiaries of its reforms.[43]

Carl D. Perkins Vocational and Applied Technology Education Act The Carl D. Perkins Vocational and Technical Education Act[44] governs about a billion dollars in federal vocational education appropriations annually. The overwhelming majority of school districts receive Perkins Act funds, and are subject to its requirements. These includes mandates, added to the law in 1990 and strengthened in 1998, for programs of high quality that prepare students to meet the challenging state academic standards set for all students and to enter high-wage careers and postsecondary education; teach them all aspects of the industry they are studying (rather than narrow skills) and integrate academic and vocational learning. Perkins also includes strong equity mandates, requiring states and schools to plan for successful participation by students with disabilities (and other members of what Perkins calls "special populations," including students who are limited English proficient, or whose families are economically disadvantaged) in these high quality programs.[45]

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[40]. 20 U.S.C. §1681; *see also* 34 C.F.R. part 106 (U.S. Department of Education/Office for Civil Rights regulations).

[41]. For the Title IX regulations explicitly addressing discrimination based upon pregnancy, parenting or family status, see 34 C.F.R. §§106.21(c), 106.40.

[42]. 20 U.S.C. §6301 *et seq.*

[43]. *See, e.g.*, 20 U.S.C. §§6301(b)(3); 6311(b)(3)(F)(i), (ii); 6312(b)(4)(B); 6314(b)(2)(v); 6315(b)(2)(A)(i). For a discussion of Title I, as amended by the Improving America's Schools Act of 1994, see Margot Rogers, *Planning for Title I Programs* (1995), available from the Center for Law and Education, 1875 Connecticut Ave., N.W., Suite 510, Washington, D.C. 20009 (phone: 202/986-3000; fax: 202/986-6648).

[44]. 20 U.S.C. §2301 *et seq.*, as amended by Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. No. 105-332, 112 Stat. 3076 (October 31, 1998).

[45]. *See* Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. No. 105-332, 112 Stat. 3076 (October 31, 1998), sec. 1, §§122(c)(7), (8) and 134(b)(7) (8), 112 Stat. at 3104, 3115 (to be codified at 20 U.S.C. §§2342(c)(7), (8) and 2354(b)(7), (8). For a full discussion of this topic, see Eileen L. Ordover and Leslie T. Annexstein, *Ensuring Access, Equity, and Quality for Students in School-to-Work Systems* (1999), available from the Center for Law and Education, 1875 Connecticut Ave., N.W., Suite 510, Washington, D.C. 20009 (phone: 202/986-3000; fax: 202/986-6648).

State education reform laws Many states have enacted comprehensive school reform laws that address such issues as standards for what all students should know and be able to do, testing and assessment of students and promotion and graduation requirements. These laws have a profound impact on the education and education rights of children with disabilities, regardless of whether the laws explicitly address their participation.

Family Educational Rights and Privacy Act The Family Educational Rights and Privacy Act ("FERPA")[46] addresses student records, and applies to all educational Institutions that receive funds from the U.S. Department of Education -- and so to virtually all public schools (and many private ones as well). FERPA protects the right of parents to inspect and review their child's education records, and the right of students aged 18 and over to inspect and review their own records. FERPA also protects the confidentiality of education records, and provides parents and students with opportunities for correcting inaccurate records.

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[46]. 20 U.S.C. §1232g. See also the FERPA regulations, which may be found at 34 C.F.R. part 99.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#2 – The Right to Learn In The General Curriculum and the Relevance of State Standards

In recent years, as a central part of education reform initiatives, most states have adopted content and student performance standards for what all children should know and be able to do at various points in their schooling. The general curriculum reflects these standards. The Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act give students with disabilities clear legal rights to participate meaningfully in the general curriculum – regardless of the kind of classroom or setting in which they are receiving their education. This includes the right to specially designed instruction and support services geared to attainment of the standards and successful learning in the general curriculum. This topic brief discusses these participation rights.

The Definition of FAPE and the Relevance of State Standards Under IDEA

The Individuals with Disabilities Education Act ("IDEA") entitles all eligible children to a "free appropriate public education," or "FAPE", defined in the Act as special education and related services that

- are provided at public expense, under public supervision, at no charge to parents;
- are provided in conformity with a properly developed IEP;
- include an appropriate preschool, elementary or secondary education in the state involved; and
- meet the standards of the state education agency.[47]

The latter two criteria are central to the right of students with disabilities to meaningful opportunities to learn in the general curriculum. They establish that the goals and content of a child's special education (specially designed instruction) and related services are not to be designed in a vacuum but, rather, by reference to the meaning and content of education for *all* students in that state, school district and school.

The general curriculum and any state (or local) content and student performance standards define (in part) "an appropriate elementary or secondary education in the State involved." In addition, state-adopted content and performance standards are "standards of the state educational agency." FAPE thus includes meaningful opportunities to learn the body of knowledge and range of skills that all students are expected to master, through specialized instruction and services designed to address the

[47]. *See* 20 U.S.C. §1401(8).

unique disability-related needs of children with disabilities *and* to enable them to succeed in the general curriculum.

Other IDEA Provisions Regarding Participation in the General Curriculum

The 1997 amendments to IDEA reinforce and make more explicit this mandate from prior law. Critical provisions include the following:

Evaluations Evaluations must gather information about strategies and interventions that the child needs to participate and progress in the general curriculum.[48]

Definition of Specially Designed Instruction The "specially designed instruction" that makes up "special education" includes adapting the content, methodology or delivery of instruction to ensure a child's access to the general curriculum, so that he or she can meet the educational standards that apply to all children.[49]

Individualized Education Programs IEPs must describe how the child's disability affects participation and progress in the general curriculum. They must also contain goals and objectives geared towards enabling him or her to do so. IEPs are to include special education, related services, supplementary aids and services and supports for school personnel that will allow the student to progress in the general education curriculum. IEPs must be reviewed periodically and revised to address any lack of expected progress in the general curriculum.[50]

IEP Teams IEP teams must include someone knowledgeable about the general education curriculum, as well as at least one of the child's regular education teachers if the child is or may be participating in the regular education environment.[51]

Promising Practices As did prior law, IDEA as amended in 1997 requires states and school systems to keep abreast of research-based promising practices for teaching students with disabilities the general curriculum, and to incorporate these practices as appropriate into IEPs.[52]

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[48]. 20 U.S.C. §1414(b)(2)(A), (c)(1)(iv); 34 C.F.R. §§300.532(b), 300.533(a)(2)(iv).

[49]. 34 C.F.R. §300.26(b)(3).

[50]. 20 U.S.C. §1414(d)(1)(A), (d)(4); 34 C.F.R. §300.347.

[51]. 20 U.S.C. §§1414(d)(1)(B); 34 C.F.R. §300.344(a)(2), (4)(ii).

[52]. 20 U.S.C. §1412(a)(14) as amended, incorporating by reference 20 U.S.C. §1453(c)(3)(D)(vii); 20 U.S.C. §1413(a)(3)(A), incorporating by reference 20 U.S.C. § 1453(c)(3)(D)); 34 C.F.R. §300.382(g). *See also Timothy W. v. Rochester School District*, 875 F.2d 954, 966-67, 973 (1st Cir. 1989), *cert. denied*, 493 U.S. 983, 110 S. Ct. 519 ("Congress clearly saw education for the handicapped as a dynamic process, in which new methodologies would be continually perfected, tried, and either adopted or discarded, so that the state's educational response to each...child's particular needs could be better met"; "...educational methodologies are not static, but are constantly evolving and improving. It is the school

Assessment Children with disabilities must be included in general state and district-wide assessments, with appropriate accommodations or alternate assessments where necessary.[53]

Performance Goals States must set goals for the performance of students with disabilities. These goals must be consistent with any goals and standards the state has set for students in general.[54]

Accountability The new law requires states and school districts to gather and make public information that parents can use to hold schools accountable for how well their children do in school. First, states must set "performance indicators" they will use to assess how well the state is doing in educating children with disabilities, including at least performance on assessments, drop-out rates and graduation rates. The state must report to the public on how well it is doing on these indicators every two years. In addition, the state must make public statistics showing how children with disabilities fare on the general assessments given to all students, including how many are participating and how they achieve.[55] It must do the same regarding children who take alternate assessments.[56]

The Right to Equally Effective Educational Programming Under §504 and the ADA

Apart from any IDEA requirements, the §504 and ADA regulations require schools to provide the vast majority of students with disabilities with the instruction and supports necessary to allow them to learn what the general curriculum teaches, including the knowledge and skills called for by any standards the state has adopted for all students. These regulations may also require schools to change practices that hinder effective access to the general curriculum, or other instruction tied to the standards set for all students.

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district's responsibility to avail itself of these new approaches in providing an education program geared to each child's individual needs.").

[53]. 20 U.S.C. §1412(a)(17)(A); 34 C.F.R. §300.138. For the small number of children who cannot participate even with accommodations, states and school districts must create alternate assessments. *Id.*

[54]. 20 U.S.C. §1412(16); 34 C.F.R. §300.137. This means that the state cannot set separate, weaker standards for students with disabilities. Rather, the state must supplement the goals and standards it uses for all students with any additional ones required by the unique needs of children with disabilities.

[55]. This requirement applies only if doing so would be statistically valid and would not result in the disclosure of performance results identifiable to individual children. 20 U.S.C. §1412(a)(17)(B)(iii)(I); 34 C.F.R. §300.139(a)(2).

[56]. 20 U.S.C. §§1412(16), (17); 34 C.F.R. §300.139.

1. Comparable Benefits

The §504 regulations require public school systems to provide all children with disabilities a "free appropriate public education" consisting of "regular or special education and related aids and services that...are designed to meet individual educational needs...as adequately as the needs of nonhandicapped persons are met...."[57] The regulations also prohibit schools from affording qualified students with disabilities "an opportunity to participate in or benefit from...[an] aid, benefit or service that is not equal to that afforded others," providing "an aid, benefit, or service that is not as effective as that provided to others," or providing "different or separate aid, benefits, or services unless...necessary to provide...aid, benefits, or services that are as effective as those provided to others."[58] The ADA regulations applicable to state and local governmental services contain the same prohibitions.[59]

In order to be "equally effective" under these regulations, aids benefits and services "must afford...equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the [student's] needs."[60] The opportunity to learn the general curriculum and to meet content and performance standards, define the inputs and outcomes, respectively, of a quality education - and so the "aid, benefit or service" that is public education. If students capable of participating, with or without appropriate services, are denied educational opportunities designed to allow them to learn in the general curriculum and attain the standards set for all students, they are provided instead an "aid, benefit or service that is not equal to that afforded others," that "is not as effective as that provided to others," and that is unnecessarily "different or separate," in violation of the §504 and ADA

2. "Criteria and Methods of Administration" that Discriminate

The §504 regulations also make it illegal for school systems running programs to "utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,[or] (ii) that have the...effect of defeating or substantially impairing accomplishment of the objectives of the...program with respect to handicapped persons...."[61] The ADA regulations contain a

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[57]. 34 C.F.R. §104.33(a), (b)(1).

[58]. 34 C.F.R. §§104.4(b)(1)(ii) - (iv).

[59]. *See* 28 C.F.R. §35.130(b)(1)(ii) - (iv).

[60]. 34 C.F.R. §104.4(b)(2); 28 C.F.R. §35.130(b)(1)(iii).

[61]. 34 C.F.R. §104.4(b)(4). OCR has defined "criteria" as written or formal policies, and "methods of administration" as a state or school system's actual practices and procedures. *See Illinois State Bd. of Ed.*, 20 Individuals with Disabilities Education Law Report [IDELR] 687 (OCR 12/3/93).

similar ban.[62] "Criteria" are written policies; "methods of administration" are a school system's actual practices.

In public school systems, learning what is included in the standards and the general curriculum is one of the key "objectives of the program or activity."[63] "Criteria or methods of administration" that limit the opportunities for students with disabilities to receive the educational programming necessary for them to do so "have the...effect of defeating or substantially impairing the accomplishment of"[64] this objective, and constitute prohibited discrimination.

Avoiding such discrimination requires school systems to identify and examine policies and practices that may have the effect of limiting access to the kind of instruction necessary to attain the standards or otherwise achieve in the general curriculum. Depending upon the circumstances, any number of policies and practices might have this effect. Examples include lack of coordination (in terms of both scheduling and content) between pull-out programs like resource rooms and the mainstream academic curriculum; providing a diluted curriculum in programs and classes labeled as serving students with behavioral (or any other) disabilities;[65] inappropriate reliance upon punitive discipline, including disciplinary exclusion; and the failure to provide for the appropriate integration of special education supports and related services, including behavioral supports, into what are conceived of as regular education classes.[66]

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[62]. *See* 28 C.F.R. §35.130(b)(3). *See also* 28 C.F.R. §35.130(b)(7) (public entity must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on basis of disability, unless entity can demonstrate that modifications would fundamentally alter the nature of its program, service or activity); 28 C.F.R. §35.130(b)(8) (public entity may not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities *or any class of individuals with disabilities* from fully and equally enjoying any service, program or activity unless such criteria can be shown to be necessary for provision of the service, program or activity being offered) (emphasis added).

[63]. 34 C.F.R. §104.4(b)(4)(ii).

[64]. 34 C.F.R. §104.4(b)(4)(ii).

[65]. *See also* 34 C.F.R. §104.34(c) (services provided in facilities identifiable as being for individuals with disabilities be comparable in quality to those provided to nondisabled individuals).

[66]. *Cf.* Judith E. Heumann and Thomas Hehir, U.S. Department of Education/Office of Special Education Programs Memorandum 95-5, November 23, 1994, *reprinted at* 21 IDELR 1152 (educational decisions under IDEA may not be based solely on administrative convenience or the configuration of the delivery system); *Response to Inquiry of Latshaw*, Education of the Handicapped Law Report [EHLR] 213:124 (OSEP 3/1/88).

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#3 – Related Services and the "Medical Exclusion"

This topic brief outlines the requirements under the Individuals with Disabilities Education Act and the regulations implementing Section 504 of the Rehabilitation Act of 1973 that eligible students with disabilities receive "related services," and discusses the right, as a related service, to assistance with significant health-related needs during the school day.

The Right to Related Services in General

The Individuals with Disabilities Education Act ("IDEA") requires school systems to provide eligible children with a "free appropriate public education" consisting of "special education" and "related services" (and including an appropriate preschool, elementary or secondary education in the state involved).[67] The regulations implementing section 504 of the Rehabilitation Act of 1973 also call for a "free appropriate public education." Under these regulations, a "free appropriate public education" may consist of either "special education" *or* "regular education" and "related aids and services."[68]

The related services mandated by IDEA consist of "[t] transportation and such developmental, corrective and other supportive services...as may be required to assist a child with a disability to benefit from special education."[69] The section 504 regulations do not define the "related aids and services" required for section 504 compliance. However, related services developed and delivered in accordance with IDEA requirements will ordinarily satisfy the §504 requirement as well.[70]

Under both IDEA and §504, the particular related services a child is to receive must be based upon an individualized determination of his or her unique needs — *not* upon the category of his or her disability.[71] Thus, for example, a blanket rule or policy that allowed only children with severe emotional disturbance to receive counseling as a

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[67]. 20 U.S.C. §§1401(8), 1412(a); 34 C.F.R. §300.13.

[68]. 34 C.F.R. §104.33(b).

[69]. 20 U.S.C. §1401(22).

[70]. 34 C.F.R. §104.33(b)(2).

[71]. *See, e.g., Inquiry of Rainforth*, 17 Education of the Handicapped Law Report [EHLR] 222 (OSEP 10/24/90) (regarding IDEA); *Prescott (AZ) Unified School District No. 1*, EHLR 352:540 (OCR 5/22/87) (regarding §504). *See also* OSEP 11/23/94 Memorandum, *supra* (IDEA).

related service would violate both laws. In addition, the team developing a child's Individualized Education Program ("IEP") must include *all* of the related services the student requires under the law, not simply those readily available within the school system.

Transportation

Where needed to accommodate the needs of a child receiving special education under IDEA, transportation includes:

- travel to and from school and between schools where a student's educational program is provided at more than one site;
- travel in and around school buildings; and
- specialized equipment such as special or adapted buses, lifts and ramps.[72]

Developmental, Corrective and Supportive Services

IDEA and its regulations list the following as *examples* of developmental, corrective and supportive services falling within the category of "related services":

- speech-language pathology and audiology services;
- psychological services;
- physical therapy;
- occupational therapy;
- medical services for diagnostic or evaluation purposes only, provided by a licensed physician to determine a child's medically related disability resulting in the child's need for special education and related services;
- orientation and mobility services for children with visual impairments;
- recreation, including assessment of leisure function, therapeutic recreation services, leisure education and recreation programs in schools and community agencies;
- counseling services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel;
- parent training and counseling aimed at assisting parents in understanding the needs of their child, providing parents with information about child development, and helping them acquire skills to allow them to support implementation of their child's IEP;
- rehabilitation counseling services;
- early identification and assessment of disabilities in children;
- school health services provided by a qualified school nurse or other qualified personnel; and

[72]. 34 C.F.R. §300.24(b)(15).

social work services in school, including group and individual counseling with the child and family, working with problems in a child's home, school or community that affect his or her adjustment in school, and mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.[73]

These services are *not* the only ones that qualify as "related services" under IDEA: if a child needs a particular service in order to benefit from special education and the service is a developmental, supportive or corrective one, it is also a "related service" and should be included in the child's IEP, regardless of whether it is expressly listed in IDEA or its regulations.[74] For some children, for example, a part or full time aide might constitute a required related service, as might certain equipment or assistive technology, such as a computer or tape recorder.[75]

The "Medical Exclusion" and Assistance with Health-Related Needs In School

As noted above, the IDEA definition of "related services" includes "medical services...for diagnostic and evaluation purposes only."[76] "Medical services," in turn, are defined in the IDEA regulations as "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services."[77] All other physician services are excluded from the range of related services that school systems must provide. This is known as the "medical exclusion." On the other hand, if a service can be provided by a non-physician, under these rules, it does *not* fall under the medical exclusion, and must be included in the IEP and provided if it otherwise meets the definition of a related service.

In the past, disputes have arisen about whether, under these rules, a student has a right to health-related assistance by a non-physician that his or her school district deems too complex, intensive or costly. Two U.S. Supreme Court decisions make it clear that schools must provide necessary in-school assistance with health-related needs, so long as they can be provided by a non-physician.

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[73]. 20 U.S.C. §1401(22) and 34 C.F.R. §300.24. Each of these services is further defined in 34 C.F.R. §300.24(b).

[74]. 34 C.F.R. part 300, App. A, para. 34.

[75]. Depending upon a student's particular circumstances, a school system might be required to provide a computer or other assistive technology as "special education," as a "related service" or as a "supplementary aid or service" to facilitate his or her education in the regular education setting pursuant to IDEA's least restrictive environment requirements. 34 C.F.R. §300.308. *See also Inquiry of Goodman*, 16 EHLR 1317 (OSEP 8/10/90).

[76]. 20 U.S.C. §1401(22).

[77]. 34 C.F.R. §300.24(b)(4).

The first decision, in the 1984 case of *Irving Independent School District v. Tatro*,[78] required a school system to provide clean intermittent catheterization to a student needing it every three to four hours during the school day. The Court held that if a student cannot attend school unless provided with certain health-related assistance during the school day, such help is a "supportive service" necessary to assist him or her to benefit from special education, and that if it can be provided by a school nurse, trained layperson or other non-physician, it is *not* an excludable medical service; rather, it is a "school health service" as defined by the IDEA regulations — and so a required related service under IDEA.[79]

The second case, *Cedar Rapids Community School District v. Garret F.*,[80] was decided in 1999. The student in *Garret F.* needed a range of assistance with physical needs during the school day, including suctioning of his tracheotomy tube and other tasks related to his use of a ventilator. The school system characterized these as "continuous nursing services" and claimed that they were not required related services but, rather, fell under the medical exclusion because of their intensity and cost. The Supreme Court rejected the school system's position, holding that the 15 year-old rule of *Tatro* was sound and applicable. Therefore, the school system had to provide the services Garret F. needed, even if they were "continuous," and even if they required a nurse. In explaining its decision, the Court stated, "[t]his case is about whether meaningful access to public schools will be assured....It is undisputed that the services at issue must be provided if Garret is to remain in school. Under the statute, our precedent, and the purposes of the IDEA, the District must fund such `related services' in order to help guarantee that students like Garret are integrated into the public schools."[81]

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[78]. 468 U.S. 883, 890, 104 S.Ct. 3371, 3376 (1984).

[79]. *Id.*, 468 U.S. at 892-893, 104 S.Ct. at 3377-3378.

[80]. 526 U.S. 66, 119 S.Ct. 992.

[81]. 526 U.S. at 79, 119 S. Ct. at 1000.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#4 – A *Free* Appropriate Public Education: Using Insurance to Pay for Special Education and Related Services

This topic brief focuses on the legal requirement that special education and related services be made available "free" to eligible students with disabilities, with special attention to the circumstances under which a child's insurance, including Medicaid and other public health insurance programs, can be used to pay for services.

The Requirement of a "Free" Appropriate Public Education

Both the Individuals with Disabilities Education Act ("IDEA") and the regulations implementing Section 504 of the Rehabilitation Act of 1973 – the two major federal laws addressing the education rights of children with disabilities – provide that public school systems must make available to eligible children a "free" appropriate public education.[82] Both laws allow public school systems to charge students with disabilities or their parents the same incidental fees, if any, charged nondisabled students or their parents in connection with the regular education program.[83] However, whether required under IDEA or §504, all special education, related services, assistive technology and required evaluations must be provided at public expense, without cost to child, parent or guardian.[84] Consistent with this rule, for example, parents cannot be required to use their children's social security or SSI benefits to fund services due them under these laws.[85]

Using Private Health Insurance to Pay for Services

Schools may not require a parent to use *private* health insurance to pay for or defray the cost of any services necessary to provide a child with a free appropriate public education under IDEA; schools may access private insurance only with the parent's informed consent.[86] *Each time* a school would like to use a family's private insurance, it must obtain informed consent and explain to the child's parents that they may refuse to

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[82]. 20 U.S.C. §1412(a)(1)(A); 34 C.F.R. §104.33(a).

[83]. *See* 34 C.F.R. §300.26(b)(1); 34 C.F.R. §104.33(c).

[84]. 20 U.S.C. §§1401(8)(A), (25); 34 C.F.R. §300.13(a); 34 C.F.R. §104.33(c).

[85]. *McLain v. Smith*, 16 Education of the Handicapped Law Report [EHLR] 6 (E.D. Tenn. 1989).

[86]. 34 C.F.R. §300.142(f).

allow their insurance to be used, and that any such refusal will not relieve the school of its duty to ensure that the child receives all necessary services at no cost to the family.[87]

Tapping Medicaid or Other Public Health Insurance Benefits

The rules under IDEA regarding the use of insurance are different for children who have public insurance, such as Medicaid. They do not expressly require schools to obtain informed consent from a parent before tapping a child's Medicaid or other public insurance.[88] However, with a few exceptions not relevant here, both IDEA and the Family Educational Rights and Privacy Act (FERPA)[89] require schools to obtain parental consent before disclosing information from a child's education records to outside parties such as a Medicaid or other public health insurance agency.[90] Therefore, while the school may not need consent to tap into a child's public insurance benefits, it *will* need informed parental consent before it can pass along the *information* it needs to disclose in order to do so.

Under IDEA, "consent" means that the parent has been fully informed of all relevant information, in her native language or other mode of communication; that the parent understands and agrees in writing; that the consent describes what the school system seeks to do, and lists the records that will be released and to whom; and that the parent understands that giving consent is voluntary, and that she can change her mind at any time.[91] By virtue of these requirements, parents should have advance notice of the school's efforts to use a child's public health insurance to pay for special education services, and an opportunity to prevent any related disclosure of information from the child's education records.[92]

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87. *Id.* See also 34 C.F.R. §300.500(b)(1), regarding consent in general.

88. 34 C.F.R. §300.142(e).

89. 20 U.S.C. §1232g.

90. 34 C.F.R. §300.571; 34 C.F.R. §99.30 (FERPA regulations). *See also Inquiry of Wisconsin Department of Public Instruction*, 28 Individuals with Disabilities Education Law Report] IDELR 497 (Family Policy Compliance Office 1997). The Family Policy Compliance Office, part of the U.S. Department of Education, enforces compliance with FERPA.

91. 34 C.F.R. §300.500(b)(1).

92. In many states, the Medicaid (or other public insurance) agency requires parents to sign a broad consent form allowing it to obtain from other agencies, including schools, the information it needs in order to administer the public insurance program. The Family Policy Compliance Office, which enforces FERPA, has stated that, depending upon the details, these consent forms may satisfy the requirement of prior parental consent for disclosure of information from education records. *See Inquiry of Wisconsin Department of Public Instruction, supra.* However, a broad consent form provided by the public insurance agency as a part of the application process, and before the school even decided that it would like to tap the public insurance (for which the child presumably has not yet even been found eligible), would not seem to meet the IDEA requirements for consent discussed above.

In addition, before tapping a child's Medicaid or other public health insurance, the school system must make sure that tapping the child's public health insurance will *not*

- decrease available lifetime coverage or any other insured benefit, *or*
- result in the family paying for services that the child needs outside of school, and that otherwise would be covered by the public insurance program, *or*
- increase premiums or lead to discontinuation of the insurance, *or*
- risk loss of eligibility for home and community-based waivers, based on total health-related expenditures.[93]

School personnel acting without the participation of the child's parent would lack the information necessary to ensure that none of these bad consequences will ensue. Thus, to comply with these provisions, it would seem that before tapping public insurance, school officials, at a minimum, must inform the parent of the school's interest in utilizing public insurance benefits; explain exactly what it is that they propose to do, as well as the above-listed constraints on their freedom to do so; seek from the parent (and other relevant sources) the information necessary to make the required determinations; solicit any parental concerns; and give parents a meaningful opportunity to express any such concerns. School officials may not require parents to sign up for Medicaid or other public insurance as a condition for their child receiving services under IDEA.[94] Nor may they require parents whose children *are* enrolled in public insurance programs to incur any out-of-pocket expenses, such as paying a deductible or co-payment.[95]

A Final Note About the Use of Insurance

Whether insurance is public or private, parents and students who suffer financial loss when insurance is used to pay for what should have been a *free* appropriate public education may recover their losses from the responsible school system.[96] Parents and

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[93]. 34 C.F.R. §300.142(e)(2)(iii).

[94]. 34 C.F.R. §300.142(e)(2)(i).

[95]. 34 C.F.R. §300.142(e)(2)(ii).

[96]. *See Shook v. Gaston County Board of Education*, 882 F.2d 119 (4th Cir. 1989), *cert. denied*, 493 U.S. 1093, 110 S. Ct. 1166 (1990); *Seals v. Loftis*, 614 F. Supp. 302 (E.D.Tenn. 1985).

Financial loss from the use of insurance might occur in a variety of ways, including, e.g., a decrease in available lifetime coverage under the policy; a decrease in available annual coverage or any other benefit under the policy; payment of a deductible amount for a particular service; an increase in premiums; discontinuation of the policy; or decreased future insurability with a different insurance company if the educational services for which insurance is used are deemed treatment for a pre-existing medical condition. It also includes the kinds of losses, listed above, that preclude a school from tapping Medicaid or other public insurance benefits.

advocates should also note that while the above specific provisions regarding public and private insurance use come from the IDEA regulations, the U.S. Department of Education/Office for Civil Rights has long opined that schools may not require parents to use health insurance to help pay for services required under §504 if doing so would pose a risk of financial loss to parent or child.[97]

[97]. *See Trans Allied-Medical Services, Inc.*, 16 EHLR 963(OCR 5/30/90).

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#5 – The Content of Individualized Education Programs ("IEPs")

This topic brief discusses legal requirements concerning the content *of the Individualized Education Programs required by the Individuals with Disabilities Education Act, including special options for three through five year olds. For a discussion of the* procedures *schools must follow in developing IEPs, see Topic Brief #6, entitled "IEP and Placement Decisions."*

The Requirement of an IEP in General

Under the Individuals with Disabilities Education Act ("IDEA"), the Individualized Education Program ("IEP") serves as a blueprint for the special education and related services an eligible child is to receive. An IEP must be developed for each eligible child *before* special education and related services begin.[98]

A meeting must be held to develop a child's first IEP within 30 days of a decision that he or she is eligible for services under IDEA.[99] Thereafter, an IEP must be in effect at the beginning of every school year.[100] Failure to develop an IEP — as well as failure to follow the specific procedures set out in IDEA and the regulations for doing so — is a failure to provide a free appropriate public education.[101]

Once an IEP has been developed, the school system must provide the specialized instruction and services it contains. The IEP must be implemented as soon as possible after the IEP meeting.[102] It must be accessible to all teachers and services providers who are responsible for implementing it, including the child's regular education teachers.[103] In addition, school personnel must inform each teacher and service provider of their specific responsibilities for implementing the IEP, and of the modifications, accommodations and supports included in it.[104]

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[98]. 34 C.F.R. §300.342(b)(1)(i); 34 C.F.R. part 300, App. A, para. 14.

[99]. 34 C.F.R. §300.343(b).

[100]. 20 U.S.C. §1414(d)(2)(A); 34 C.F.R. §300.342(a).

[101]. 20 U.S.C. §§1401(8)(D), 1412(a)(4); 34 C.F.R. §§300.13(d), 300.535(b); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207, 102 S.Ct. 3034, 3035 (1982).

[102]. 34 C.F.R. §300.342(b).

[103]. *Id.*

[104]. *Id.*

IEP Content -- Requirements for All Students

In developing the IEP, the team must consider the child's strengths and the parents' concerns for enhancing his or her education; the results of the initial or most recent evaluation of the child; and the child's performance on any state- or district-wide assessments.[105] An IEP must always include the following:

- A statement of the child's current level of educational performance, including how disability affects his or her progress in the general curriculum;
  - This statement should describe the effect of the child's disability on both academic and non-academic (e.g. activities of daily living, mobility, emotional, behavioral) aspects of his or her performance. It should be written in objective, measurable terms, drawing upon evaluation results.

- Measurable annual goals, with either benchmarks or short-term objectives, addressing progress in the general curriculum and all other educational needs resulting from the child's disability;
  - Annual goals describe what the student can reasonably be expected to accomplish over the year; short-term objectives are measurable, intermediate steps towards the corresponding annual goal; and benchmarks describe the amount of progress the child is expected to have made by certain points in the year.[106] Goals, objectives and benchmarks provide a basis for determining how well a child is progressing, what he or she is learning, whether the IEP needs to be revised and whether he or she is receiving an appropriate education.[107] The development of specific, measurable, well-defined, meaningful goals and short-term objectives or benchmarks is crucial.
  - All areas of need revealed by the statement of present educational performance should have corresponding annual goals and benchmarks or short-term objectives.

- An explanation of how the child's progress towards the annual goals will be measured, and of how the child's parents will be regularly informed of his or her progress (including being informed of whether that progress is sufficient to achieve the goals by the end of the year);

- A statement of the special education, related services and supplementary aids and services to be provided to the child (or on the child's behalf), and the program modifications or supports for school personnel to be provided;

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[105]. 34 C.F.R. §300.346(a)(1).

[106]. *See* 34 C.F.R. part 300, App. A, para. 1.

[107]. *See id.*

- These are all to be designed so as to permit the child to attain the annual goals, progress in the general curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities.[108]

- An explanation of the extent, if any, to which the child will not be educated in regular education classes;

- A statement of any individual modifications the child will need in the administration of state- or district-wide assessments of student achievement;
  - If the IEP team determines that a child will not participate in a particular state- or district-wide assessment, or part of an assessment, the IEP must also include a statement explaining why the particular assessment is not appropriate for the student, and how he or she will be assessed instead.[109]

- The projected date for the beginning of the services, modifications, etc. described in the IEP, and the anticipated frequency, location and duration of each.[110]

The IEP must contain a statement of all services needed by the child, not just those which are available within the school system.[111] The school system then must arrange to provide all of the services included in the IEP.[112]

"Special factors": Because of implementation problems in the past, the IDEA Amendments of 1997 expressly require IEP teams to consider and address five "special factors," going to particular areas of potential educational need, when designing IEPs. These "special factors" are as follows:

- if a child's behavior impedes his or her learning or the learning of others, the team must consider positive behavioral interventions, strategies and supports to address it;
- if a child has limited English proficiency, the team must consider the child's

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[108]. 20 U.S.C. §1414(d)(1)(A)(iii); 34 C.F.R. §300.347(a)(3).

[109]. 20 U.S.C. §1414(d)(1)(A)(v)(II); 34 C.F.R. §300.347(5)(ii).

[110]. 20 U.S.C. §1414(d)(1)(A); 34 C.F.R. §300.347. Note, however, that the IEP team of a child convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement notwithstanding the requirements of 20 U.S.C. §1414(d)(1)(A) and 34 C.F.R. §300.47 if the State has demonstrated a "bona fide security or compelling penological interest that cannot otherwise be accommodated." 20 U.S.C. §1414(d)(6)(B); 34 C.F.R. §300.311(c).

[111]. *See, e.g., Todd D. v. Andrews*, 933 F.2d 1576, 1580-81 (11th Cir. 1991) (district court erred by ordering alteration of IEP goals so that IEP could be implemented at existing placement, rather than ordering school system to provide placement that could implement IEP as written).

[112]. 20 U.S.C. §1401(8)(D); 34 C.F.R. §300.350(a)(1); 34 C.F.R. part 300, Appendix A, paragraph 31.

language needs as they relate to the IEP;

- if a child is visually impaired, the team must provide for instruction in Braille and use of Braille unless the team, based upon an evaluation of the child's skills and current and future needs, determines that this would not be appropriate;
- the IEP team must consider the communication needs of all children, and in the case of a child with a hearing impairment, take into account his or her opportunities for direct communication with peers and professionals in the child's language and communication mode and academic level, including opportunities for direct instruction; and
- for all children, the team must consider whether the child requires assistive technology devices and services.[113]

Extended School Year Services: The IEP should also indicate whether the child needs "extended school year" (ESY) services, meaning services beyond the usual length of the school year in the school system involved. ESY services must be provided if necessary in order for a child to receive FAPE.[114] For example, a child might need ESY services if he will make insufficient progress in the general curriculum or other areas of educational need (academic or non-academic) during the standard school year, or if he or she is likely to regress over school breaks and have difficulty recovering lost skills.[115] ESY services may also be required if, due to the nature and effect of the disability, a child is at a critical developmental phase for learning certain skills.[116]

Whether a student will receive ESY services must be based upon individualized consideration of his or her needs. Schools may not limit ESY services to children with only particular kinds of disabilities, nor may they place general limits on the type, amount or duration of services to be offered.[117]

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[113]. 20 U.S.C. §1414(d)(3)(B); 34 C.F.R. §300.346(a)(2), (c).

[114]. 34 C.F.R. §300.309(a).

[115]. *See, e.g., Johnson v. Independent School District No. 4*, 921 F.2d 1022 (10th Cir. 1990), *cert. denied*, 500 U.S. 905, 111 S.Ct. 1685 (1991); *Cordrey v. Eukert*, 917 F.2d 1460 (6th Cir. 1990); *Battle v. Commonwealth of Pennsylvania*, 629 F.2d 269 (3rd. Cir. 1980), *cert. denied*, 452 U.S. 968 (1981); *Reusch v. Fountain*, 872 F. Supp. 1421 (D. Md. 1994); *Lawyer v. Chesterfield Co. School Bd.*, 19 Individuals with Disabilities Education Law Report [IDELR] 904, 907 (E.D. Va. 1993).

[116]. *Lawyer, supra.*

[117]. 34 C.F.R. §300.309(a)(3).

IEP Content: Additional Requirements for Older Students

Transition planning and services: From age 14 on, the IEP must include a statement of the student's "transition service needs," focused on his or her course of study.[118] A student's planned course of study might include, for example, participation in advanced placement courses or a school-to-work or vocational education program.[119] By age 16, and earlier if appropriate in light of the student's needs, the IEP must include the full range of needed "transition services."[120] Under IDEA, "transition services" means a coordinated set of activities for a student that promotes movement from school to post-school activities, including:

- Employment,
- Post-secondary education,
- Vocational training,
- Continuing and adult education,
- Adult services,
- Independent living, or

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[118]. 20 U.S.C. §1414(d)(1)(A)(vii)(I); 34 C.F.R. §300.347(b)(1). The mandate to begin transition planning for all youth with disabilities by no later than age 14 was added to IDEA in 1997. Previously, the law allowed schools to delay transition planning for many students until age 16. In making this change, Congress explained that the purpose of the new provision was to supplement the existing requirements for 16-year olds, by focusing attention at an earlier age on how the student's educational program can be planned to make for a successful transition to his or her goals for life after high school. *See* H. R.Report 105-95, 105th Cong., 1st Sess., at 101 (1997).

[119]. Two federal laws have mandated or encouraged states and school systems to create high quality vocational education and school-to-work programs for *all* students: the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. §2301 *et seq.*, and the School-to-Work Opportunities Act, 20 U.S.C. §6101 *et seq.* For a discussion of these laws as they affect students with disabilities, see E. L. Ordover and L. T. Annexstein, *Ensuring Access, Equity and Quality for Students with Disabilities in School-to-Work Systems* (1999), available from the Center for Law and Education, 1875 Connecticut Ave., N.W., Suite 510, Washington, D.C. 20009 (telephone: 202/986-3000; fax: 202/986-6648).

[120]. 20 U.S.C. §1414(d)(1)(A)(vii)(II); 34 C.F.R. §300.347(b)(2). Note, however, that these requirements do not apply to youth with disabilities who are convicted as adults under state law and incarcerated in an adult prison, if their eligibility for IDEA services will end, because of age, prior to their release from prison. 20 U.S.C. §1414(d)(6)(A)(ii); 34 C.F.R. §300.311(b)(2). The determination of whether IDEA eligibility will end (because of age) prior to release from prison must be based upon consideration of the youth's sentence and eligibility for early release. 34 C.F.R. §300.311(b)(2).

- Community participation.[121]

Transition services must be based upon the individual student's preferences, interests and needs, and include:

- Instruction,
- Related services,
- Community experiences,
- Development of employment and other post-school adult living objectives, and
- Acquisition of daily living skills and functional vocational evaluation when appropriate.[122]

The school system is responsible for ensuring that each youth receives all needed transition services. However, particular services might be provided by other agencies, such as a state's vocational rehabilitation agency. In that case, the IEP must specify the role such outside entities will play.[123] If an outside agency fails to provide the transition services for which it is responsible in the IEP, the school system must reconvene the IEP team and devise alternative ways to meet the student's transition objectives.[124]

Transfer of Rights: Changes made to IDEA in 1997 address the transfer of IDEA rights regarding notice, consent, participation in educational planning, and dispute resolution from parent to child when the child reaches the age of majority under state law.[125] Beginning at least one year before the student reaches the age of majority, the IEP must include a statement that the he or she has been informed of the IDEA rights that will transfer when he or she becomes an adult.[126]

IEP Content – Options for Three through Five Year Olds

Under certain circumstances, school systems may provide three through five year olds with an "Individualized Family Service Plan" ("IFSP") instead of an IEP.[127] Ordinarily, IFSPs are provided only for infants and toddlers (aged birth through 2) participating in early intervention services under Part C of IDEA.

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[121]. 20 U.S.C. §1401(30); 34 C.F.R. §300.29.

[122]. 20 U.S.C. §1401(30); 34 C.F.R. §300.29.

[123]. 20 U.S.C. §1414(d)(1)(A)(vii)(II); 34 C.F.R. §300.347(b)(2).

[124]. 20 U.S.C. §1414(d)(1)(A)(vii)(II); 34 C.F.R. §300.348(a).

[125]. *See* 20 U.S.C. §1415(m); 34 C.F.R. §300.517.

[126]. 20 U.S.C. §1414(d)(1)(A)(vii)(III); 34 C.F.R. §300.347(c).

[127]. 20 U.S.C. §1414(d)(2)(B); 34 C.F.R. §300.342(c) (1999).

Substituting an IFSP for an IEP must be consistent with state policy, and must be agreed to by the parents.[128] In addition, a school system contemplating providing an IFSP instead of an IEP must give the parents a detailed explanation of the differences between an IFSP and an IEP, and obtain informed written consent.[129] For example, parents should be made aware that unlike an IEP, an IFSP need not include an early education component provided by a qualified teacher of preschool children.

IFSPs for 3 through 5 year olds must be developed using the same procedures required for developing IEPs (see discussion below).[130] IFSPs for these older children must meet the content requirements governing IFSPs under the IDEA early intervention program for infants and toddlers with disabilities. These include, among other things,

- a statement of the child's current levels of physical, cognitive, communication, social or emotional, and adaptive development;
- a statement of the family's resources, priorities and concerns regarding enhancement of the child's development;
- a statement of the specific early intervention services needed to meet the unique needs of the child and family (including the frequency, intensity and method of service delivery);
- a description of the natural environments in which services will be appropriately provided;
- a statement of the major outcomes expected to be achieved for the child and the family, including the methods to be used for assessing progress and determining whether services or goals need to be revised;
- the starting dates and expected duration of each service; and
- the steps to be taken to transition the child to preschool or other appropriate services.[131]

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[128]. *Id.*

[129]. 34 C.F.R. §300.342(c)(2) (1999).

[130]. 34 C.F.R. §300.342(c)(1) (1999).

[131]. 20 U.S.C. §1436(d). For the range of early intervention services required to be made available, see 20 U.S.C. §1432(4) and the early intervention regulations at 34 C.F.R. part 303.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#6 – Individualized Education Program ("IEP") and Placement Decisions

This topic brief discusses the procedures for developing Individualized Education Programs ("IEPs") under the Individuals with Disabilities Education Act ("IDEA"), and for making placement decisions under IDEA and Section 504 of the Rehabilitation Act of 1973, with a focus on parent participation rights. For a discussion of legal requirements regarding the content of IEPs, see topic brief #5,"The Content of IEPs."

Introduction

The Individuals with Disabilities Education Act ("IDEA") sets forth extensive procedures to be followed in determining the special education and related services that an eligible child will receive. These include procedures for developing Individualized Education Programs ("IEPs"). The U.S. Supreme Court has ruled that compliance with these procedures, which stress parent involvement, is an essential part of the free appropriate public education to which IDEA entitles all eligible children.[132]

IEP Development -- Requirements for All Students

Under IDEA, the IEP must be developed at a meeting, by the IEP team.[133] The team is composed of the following people:

- the child's parents
- at least one of the child's regular education teachers (if the child is or may be participating in the regular education environment)
- at least one of the child's special education teachers or providers
- a representative of the school system who is knowledgeable about the general curriculum, is knowledgeable about the school system's resources, and is qualified to provide, or supervise the provision of, specially designed instruction to meet the needs of children with disabilities

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[132]. *See Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 3050-51 (1982).

[133]. 20 U.S.C. §1414(d); 34 C.F.R. §§300.343(a), 300.344.

- The school system representative must have the authority to commit the school system to provide whatever services are included in the IEP, in order to ensure that the IEP will be implemented, and not be "vetoed" by school administrators or other school officials.[134]

- an individual who is qualified to interpret the instructional implications of evaluation results other individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or school system

  - The determination of whether an individual has "knowledge or special expertise regarding the child" is made by the party inviting her, i.e. the parent or school system.[135]

- whenever appropriate, the student.[136]

It is impermissible for school personnel to present a completed IEP to parents for their approval at the meeting.[137] While school personnel may bring proposed recommendations to the meeting, as may parents, the IEP must be developed *at* the meeting, with parents afforded the opportunity to participate as full-fledged collaborators in designing their child's education.[138] Parents must then be given a copy of the IEP, at no cost.[139]

School systems are responsible for initiating IEP meetings and ensuring that parents are given a meaningful opportunity to attend and participate.[140] Towards this end, school districts must schedule the meeting at a mutually convenient time and place; notify parents of the meeting far enough in advance to ensure that they will have an opportunity to attend; and include in the notice of the meeting the purpose, time and location and a list of those who will attend.[141] The notice must also inform parents of their right to bring to the meeting others with knowledge or special expertise about the

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[134]. 34 C.F.R. part 300, App. A, para. 22.

[135]. 34 C.F.R. §300.344(c).

[136]. 20 U.S.C. §1414(d)(1)(B); 34 C.F.R. §§300.343, 300.344.

[137]. 34 C.F.R. §300.340(a) (defining "IEP," in part, as a document developed *in a meeting* by certain school personnel and parents) (emphasis added); 34 C.F.R. part 300, App. A, para. 32; *Inquiry of Hellmuth*, 16 EHLR [Education for the Handicapped Law Report] 503 (OSEP 1/30/90).

[138]. *See* 34 C.F.R. part 300, App. A, para. 32; *V.W. v. Favolise*, 131 F.R.D. 654, 659 (D. Conn. 1990).

[139]. 34 C.F.R. §300.345(f).

[140]. 34 C.F.R. §§300.343, 300.345.

[141]. 34 C.F.R. §300.345(a), (b).

child,[142] and be provided in the parent's native language or other mode of communication.[143]

If neither parent can attend, the school district must use other methods to ensure that parents participate in the development of the IEP, including individual or conference telephone calls.[144] A meeting can be held without a parent only if school personnel cannot convince the parents that they should attend.[145] Even then, the school system must first try to arrange a mutually agreeable time and place and must keep records of its efforts to secure the parents' attendance.[146] These include detailed records of telephone calls made or attempted, and the results; copies of correspondence sent to the parents, and of any responses received; and detailed records of visits made to the home or parent's workplace, and the results.[147]

To ensure meaningful participation by parents, schools must arrange for translators and sign language interpreters for parents who need them.[148] The U.S. Department of Education/Office of Special Education Programs has opined that IDEA allows states or school systems to have policies prohibiting or limiting tape recording, but that any such policy must include exceptions when necessary to ensure that the parent understands the IEP or IEP process, or to implement other parental rights guaranteed by IDEA.[149] In addition, in at least two cases courts have ruled that parents have the right to tape record IEP meetings.[150]

IEP Development – Additional Requirements Regarding Transition Planning and Services

Recognizing the unique issues and concerns at stake in transition planning, IDEA requires additional measures whenever transition needs or services are to be discussed.

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[142]. 34 C.F.R. §300.345(b)(iii).

[143]. 34 C.F.R. §300.503(c).

[144]. 34 C.F.R. §300.345(c).

[145]. 34 C.F.R. §300.345(d).

[146]. *Id.*

[147]. *Id.*

[148]. 34 C.F.R. §300.345(e).

[149]. *See* 34 C.F.R. Part 300, App. A, para. 21.

[150]. *E.H. v. Tirozzi*, 735 F. Supp. 53 (D. Conn. 1990); *V.W. v. Favolise*, 131 F.R.D. 654 (D. Conn. 1990).

Parent notification: Whenever transition needs or services are to be discussed, the written notice ordinarily provided parents prior to an IEP meeting must also explain that these issues are on the agenda.[151] The notice must also inform the parent that the school will invite the student to attend, and identify any other agency that will be invited to send a representative to the meeting.[152] Receipt of such notice gives parents an opportunity to think about future goals, plans and services for their child, discuss them with him or her, and ask that additional or alternate agencies be included in the meeting.
Student participation: Schools *must* invite the student to attend any meeting at which transition services are to be discussed, and to participate in the discussion of his or her future goals and plans.[153] This mandate, reflecting the importance of self-determination and empowerment, is a strong one: if the student does not attend, the school must take other steps to ensure that the student's preferences and interests are considered.[154]

Agency participation: In light of the broad scope of required transition services under IDEA, the Act anticipates that outside agencies sometimes will participate with schools in providing them.[155] Towards this end, the law requires that meetings to discuss transition include a representative of any other agency that is likely to be responsible for providing or paying for a transition service.[156] Such agencies might include those dealing with vocational rehabilitation; employment and training; housing; specialized services for youth and adults with developmental disabilities, mental health needs, or other disabilities; and other providers relevant to the individual needs and preferences of the student.

If an agency invited to send a representative does not do so, the school system must take other steps to obtain the participation of that agency in planning transition services.[157] Once such participation is secured, the student's IEP must reflect the responsibility of each participating agency for providing particular transition services, including the school's.[158] If an outside participating agency fails to provide agreed upon services, the school must act as soon as possible to hold a new meeting and develop alternative strategies for meeting the student's transition needs.[159]

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[151]. 34 C.F.R. §300.345(b)(2), (3).

[152]. *Id.*

[153]. 34 C.F.R. §300.344(b)(1).

[154]. 34 C.F.R. §300.344(b)(2).

[155]. *See* 20 U.S.C. §1414(d)(1)(A)(vii)(II) (regarding interagency linkages).

[156]. 34 C.F.R. §300.344(b)(3)(i).

[157]. 34 C.F.R. §300.344(b)(3)(ii).

[158]. 20 U.S.C. §1414(d)(1)(A)(vii)(II); 34 C.F.R. §300.347(b)(2).

[159]. 34 C.F.R. §300.348(a).

Process for Placement Decisions

Once a child's needs have been identified and appropriate services and goals developed through the IEP process, a placement capable of providing those services and achieving those goals and objectives can be selected. Placement decisions must be individualized for each child, based upon her unique needs and abilities. Placement decisions may *not* be based upon category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.[160]

Placements must be determined at least annually, must be consistent with IDEA's presumption in favor of placement in regular education classes with appropriate supplementary aids and services, and must be based upon the IEP.[161] The latter requirement means that the IEP must be developed *before* a placement is chosen.[162] Thus it is not permissible for a school system to write an IEP to fit a placement it has already selected.

All placements must be chosen by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[163] Parents must be part of any group that makes placement decisions.[164] In order to ensure that parents have a meaningful opportunity to participate in this group, schools must notify parents of any meeting far enough in advance to ensure that they will have an opportunity to attend; schedule the meeting at a mutually agreed on time and place; notify them of the purpose, time and location of the meeting, and who will be attending; and inform them of their right to bring others with knowledge or expertise about their child with them to the meeting.[165] If neither parent can participate in a meeting at which a decision relating to placement is to be made, the school system must find other ways to ensure their participation, such as individual or conference telephone calls.[166] The school system

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[160]. 34 C.F.R. Part 300, Appendix A, para. 1.

[161]. 34 C.F.R. §300.552.

[162]. 34 C.F.R. part 300, App. A, para. 14; *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 259 (4th Cir. 1988). *C.f. Todd D.*, *supra*, 933 F.2d at 1580-81 (district court erred by ordering alteration of IEP goals so that IEP could be implemented at existing placement, rather than ordering school system to provide placement capable of implementing IEP as written).

[163]. 34 C.F.R. §300.552(a). The regulations implementing Section 504 of the Rehabilitation Act of 1973 also include this requirement. *See* 34 C.F.R. §104.35(c)(3).

[164]. 20 U.S.C. §1414(f); 34 C.F.R. §300.501(c).

[165]. 34 C.F.R. §300.501(c)(2) (incorporating by reference §300.345(a) through (b)(1)).

[166]. 34 C.F.R. §300.501(c)(3).

must also make reasonable efforts to ensure that the parents can understand and participate in group discussions, including arranging for a translator or sign language interpreter.[167] A placement decision may be made without parents' involvement only if school personnel try, and fail, to involve them. In that case, the school system must keep a record of its efforts, including detailed records of telephone calls made or attempted, and the results; copies of correspondence sent to the parents, and of any responses received; and detailed records of visits made to the home or parent's workplace, and the results.[168]

Review and Revision

Periodic or annual reviews: School districts must periodically initiate and conduct meetings to review and, if appropriate, revise a child's IEP.[169] In addition, parents have the right to request an IEP meeting at any time.[170] IEP review meetings should be held as often as necessary to address the child's needs.[171] At least one review meeting must be held each year.[172] The above-described requirements regarding IEP team members, meeting participants, meeting notice and parent participation rights apply to IEP review meetings as well.[173]

Based upon its review, the IEP team must revise the IEP as needed to address:

- any lack of expected progress in the regular curriculum;
- any lack of expected progress towards the annual goals in the IEP;
- new evaluation results, including information provided by parents;
- the student's anticipated needs; or
- other matters.[174]

Revisions: Once an IEP has been developed and agreed upon, school personnel may not unilaterally change it. In order to revise an IEP or change a placement, school systems must follow the meeting and team process described above.[175] They must

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[167]. 34 C.F.R. §300.501(c)(5).

[168]. 34 C.F.R. §300.501(c)(4) (incorporating by reference §300.345(d)).

[169]. 20 U.S.C. §1414(d)(4)(A); 34 C.F.R. §300.343(c).

[170]. 34 C.F.R. part 300, App. A, para. 20.

[171]. *Id.*

[172]. 20 U.S.C. §1414(a)(5); 34 C.F.R. §300.343(d).

[173]. 34 C.F.R. §300.344(a).

[174]. 20 U.S.C. §1414(d)(4)(A); 34 C.F.R. §300.343(c).

[175]. 34 C.F.R. §300.343(a); 34 C.F.R. part 300, App. A, para. 20.

also give parents prior written notice of the proposed change.[176] The IDEA regulations set out detailed requirements governing the content of this notice, which also must be given any time a school system proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to a child.[177] *

Parents may request an IEP or placement change, or a meeting to consider making a change, at any time. When a school system refuses to make a change sought by a parent, it must provide the written notice described above. Parents may challenge any refusal to modify an IEP or change a placement by invoking IDEA's dispute resolution procedures, which include requesting a due process hearing, filing a complaint with the state education agency, seeking mediation and bringing a lawsuit.[178]

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[176]. 20 U.S.C. §1415(b)(3); 34 C.F.R. §300.503.

[177]. 34 C.F.R. §300.504(a).

* For a discussion of these notice requirements, see Topic Brief #7 in this series, *"Notice and Consent."* The notice requirements themselves may be found at 20 U.S.C. §1415(c).

[178]. *See* 20 U.S.C. §1415(b)(6), (e), (f), (g), (i)(2); 34 C.F.R. §§300.660 - 300.662.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates
#7 – Notice and Consent

To assist parents in carrying out their critical role in educational decisionmaking under the Individuals with Disabilities Education Act, the statute contains detailed requirements concerning prior written notice of school decisions, and informed parental consent. The regulations implementing Section 504 of the Rehabilitation Act of 1973 also address notice to parents, albeit in less detail. This topic brief discusses these notice and consent requirements.

Prior Written Notice of School Decisions – Notice in General

Under IDEA, parents must be given prior written notice *any time* a school system *proposes or refuses* (usually in response to a parent's request) to *initiate or change* the identification, evaluation or educational placement of a child with disabilities or the provision of a free appropriate public education to the child.[179] This includes providing notice when school authorities decide to take certain actions under the discipline provisions of the statute.[180] The Section 504 regulations require notice of actions regarding the identification, evaluation or educational placement of students with disabilities.[181] The 504 regulations do not specify how, or at what point in time, the notice must be given. They do, however, provide that notice meeting IDEA requirements will satisfy §504 as well.[182]

The notice required by IDEA must include:

- a description of the action proposed or refused by the school system;
- an explanation of why the school system proposes or refuses to take the action;
- a description of alternatives the school system considered along with an explanation of why those alternatives were rejected;
- a description of each evaluation procedure, test, record or report the school system used as a basis for its proposal or refusal;
- a description of any other factors that are relevant to the proposal or refusal;

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[179]. 20 U.S.C. §1415(b)(3); 34 C.F.R. §300.503(a).

[180]. *See* 20 U.S.C. §1415(k)(4)(A)(i); 34 C.F.R. §300.523(a)(1).

[181]. 34 C.F.R. §104.36.

[182]. *Id.*

- a statement that the parents have rights under IDEA's procedural safeguards, and an explanation of how parents can obtain more information about procedural safeguards; and
- sources for parents to contact for help in understanding IDEA.[183]

The notice must be written in language that the general public can understand and provided in the language or other mode of communication used by the parent.[184] If the parent's native language or other mode of communication is not a written one, the school system must ensure that the notice is translated, that the parent understands it and that there is written evidence that these two requirements have been met.[185]

Procedural Safeguards Notice

As noted above, notice under IDEA must include a statement that parents have rights under the procedural safeguards created by the statute, along with information about how to obtain a description of those rights. Under certain circumstances, however, schools must automatically give parents this detailed description – called "procedural safeguards notice" – regardless of whether parents request it. Procedural safeguards notice must be given:

- when a child is referred for an IDEA evaluation for the first time;
- each time the school system notifies the parents of an IEP meeting;
- whenever the child is to be reevaluated;
- whenever parents (or the school system) file a request for a due process hearing to resolve a dispute concerning the child's education under IDEA; and
- whenever school authorities decide to take certain actions under IDEA's discipline provisions.[186]

The procedural safeguards notice must include a full explanation of all of the IDEA procedural safeguards concerning:

- independent educational evaluations;
- prior written notice;
- parental consent;
- access to education records;
- opportunity to present complaints and to initiate due process hearings;
- the child's placement while due process hearings and appeals to court are pending;
- procedures for students who are placed in interim alternative educational

[183]. 20 U.S.C. §1415(c); 34 C.F.R. §300.503(b).

[184]. 20 U.S.C. §1415(b)(4);34 C.F.R. §300.503(c)(1).

[185]. 34 C.F.R. §300.503(c)(2).

[186]. 20 U.S.C. §1415(d)(1), (k)(4)(A)(i); 34 C.F.R. §§300.504(a), 300.523(a)(1).

settings;
- requirements for parents who place their children in private schools at public expense;
- mediation;
- due process hearings, including requirements for disclosing evaluation results and recommendations;
- state-level appeals;
- lawsuits;
- attorneys' fees; and
- procedures for filing a complaint for investigation by the state educational agency.[187]

The procedural safeguards notice, too, must be written in language that the general public can understand, and provided in the language or other mode of communication used by the parent.[188] If the parent's native language or other mode of communication is not a written one, the school system must ensure that the notice is translated, that the parent understands it and that there is written evidence that these two requirements have been met.[189]

Consent in General

IDEA requires school systems to obtain informed parental consent before evaluating a child for the first time, conducting a reevaluation, or providing a child with special education and related services for the first time.[190] Note that consent is *not* required for tests or other evaluations administered to *all* children, unless, of course, the school system seeks consent from all parents.[191] A parent who consents to an evaluation is *not* also consenting to have her child receive special education and related service. Therefore, if the evaluation results in a finding that the child is eligible for services under IDEA, separate, informed consent must be obtained before such services can be provided.[192]

In addition to these IDEA requirements, IDEA permits states to require parental consent for other IDEA services and activities, for example, changes in IEPs or placement.[193] However, states with additional parental consent requirements must

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[187]. 20 U.S.C. §1415(d)(2); 34 C.F.R. §300.504(b).

[188]. 20 U.S.C. §1415(d)(2);34 C.F.R. §300.504(c).

[189]. 20 U.S.C. §1415(d)(2);34 C.F.R. §300.504(c).

[190]. 20 U.S.C. §§1414(a)(1)(C), 1414(c)(3); 34 C.F.R. §300.505(a).

[191]. 34 C.F.R. §300.505(a)(3)(ii).

[192]. 34 C.F.R. §300.505(a)(2).

[193]. 34 C.F.R. §300.505(d), incorporating by reference §300.345(d).

ensure that a parent's refusal to consent does not result in a failure to provide the child with a free appropriate public education.[194] Thus, for example, if a parent refuses to consent to a particular IEP or placement change in a state that requires consent for such changes, school personnel should work with the parent to find another way to address the educational need that prompted the proposed change.

Failure or Refusal to Consent

If a parent *fails to respond* to a request for consent to a *reevaluation*, the school system may proceed anyway if it has taken "reasonable measures" to obtain consent, including telephone calls, correspondence and visits, and has documented its efforts and the results.[195]

If a parent responds and *refuses* to consent to an *initial evaluation or reevaluation*, a number of possibilities might follow. School personnel may, and should, discuss the issue with the parent in order to understand her reasons for withholding consent, explain the school system's concerns, and try to come to a mutually agreeable resolution. Indeed, some *state* laws, regulations or policies may require this process. In addition, the IDEA regulations permit schools to request mediation in an attempt to resolve the impasse, or to seek a due process hearing and request that the hearing officer allow the evaluation (or reevaluation) to proceed over the parent's objection.[196] If, however, state law does not allow schools to do so, and/or gives parents an absolute right to refuse consent, the matter ends there, and the evaluation or reevaluation cannot proceed.[197]

Finally, schools may not use a parent's refusal to consent to one thing (e.g. a reevaluation, or a particular IEP provision in a state that requires consent for the latter) as a reason to deny a child other services or benefits due him under IDEA.[198]

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[194]. *Id.*

[195]. 20 U.S.C. §1414(c)(3); 34 C.F.R. §300.505(c).

[196]. 34 C.F.R. §300.505(b).

[197]. *See id.*

[198]. 34 C.F.R. §300.505(e) .

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

#8 – Rights of Limited English Proficient Students

Introduction

Students with disabilities who are also limited English proficient – a term used in federal law to refer to certain individuals whose native language is other than English – are entitled to the full protection of both the disability laws and those addressing language minority students. Together, these two sets of laws may be used to ensure that students who have disabilities and limited proficiency in English are well served in school.

The Individuals with Disabilities Education Act (IDEA) includes a number of explicit provisions critical to quality education for limited English proficient children with disabilities. A 1997 amendment to the law emphasizes that language needs must be taken into account in designing the particular special education services a student is to receive.[199] Other provisions of IDEA protect limited English proficient children in the special education evaluation process, require that parents be provided notices in their native language, and obligate schools to provide interpreters at meetings held to plan or review a student's special education services.[200] Beyond IDEA, however, it is critical that disability advocates for language minority children be familiar with federal laws protecting language minority, or limited English proficient, students in general. This topic brief focuses on rights under the two preeminent federal laws addressing these issues, Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, with briefer treatment of relevant provisions of the Elementary and Secondary Education Act and the Carl Perkins Vocational and Technical Education Act.

Federal Education Rights in General

Two federal anti-discrimination laws require states and school systems to give students with limited English proficiency a meaningful, equal opportunity to master the same body of skills and knowledge that all other students are expected to learn: Title VI

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[199]. 20 U.S.C. §1414(d)(3)(B)(ii). *See also Chicago (IL) Public Schools, District #299*, Education for the Handicapped Law Report [EHLR] 353:214 (U.S. Department of Education/Office of Civil Rights 2/6/89) (use of monolingual speech therapists and untrained aides to provide speech therapy to Spanish-speaking students violated Title VI of the Civil Rights Act of 1964 and §504 of the Rehabilitation Act).

[200]. 20 U.S.C. §§1414(b)(3)(A)(i) - (ii), 1415(b)(4); 34 C.F.R. §§300.345(e), 300.503(c)(1), (2); 300.504(c), 300.532(a).

of the Civil Rights Act of 1964 and the U.S. Department of Education regulations enforcing it,[201] and the Equal Educational Opportunities Act of 1974.[202] In addition, the federal statute that provides funding to state and local school systems for bilingual education was amended in 1994 to emphasize programs that help children develop proficiency in English and their native language, and to "meet the same challenging State content...and student performance standards expected for all children...."[203]

The federal laws protecting language minority students do not specify *particular* services a school must provide, either to limited English proficient students in general or to individual students. Nor do they set out particular procedures for requesting or developing services for individual students.[204] Rather, the Supreme Court ruled in *Lau v. Nichols* that implementing the regulations and program guidelines under Title VI requires "affirmative steps to rectify the language deficienc[ies]" of students "effectively foreclosed from any meaningful education."[205] The Equal Educational Opportunities Act requires states and school systems "to take appropriate steps to overcome language barriers that impede equal participation by its students in its instructional programs."[206]

Particular Requirements Under Title VI and the Equal Educational Opportunities Act

To fulfill the broad obligations created by Title VI and the Equal Educational Opportunities Act, a school system first must (1) adopt an educational approach that experts believe is sound, or promising as a new strategy, and (2) actually put the

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[201]. 42 U.S.C. §2000d and 34 C.F.R. part 106, respectively.

[202]. The pertinent provision is codified at 20 U.S.C. §1703(f).

[203]. 20 U.S.C. §7421(2)(B).

[204]. State law, however, may require particular programs, services or procedures. Parents and advocates should investigate, for example, state laws, regulations or policies on education of limited English proficient students, standards on the use of English in instructional programs and requirements for certification of personnel who work with limited English proficient students. *See, e.g.*, Ariz. Rev. Stat. Ann. §15-751 *et seq.*; Mass. Gen. L. ch. 71A.

[205]. 414 U.S. 563, 566-68 (1974). The court held that failure to address the needs of students who do not understand English constitutes illegal discrimination on the basis of national origin. The Chinese-speaking students in *Lau* were simply placed in San Francisco's general education program, without even instruction to teach them English. The case was brought in part under Title VI, and the court cited the Title VI regulation prohibiting "criteria or methods of administration" that have "the effect" of discriminating on the basis of national origin, or "the effect" of impairing or defeating an educational program's goals in regard to students of a particular national origin. (This regulation now appears at 34 C.F.R. §100.3(b)(2).) The court found it "obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from...[the] school system which denies them a meaningful opportunity to participate in the educational program--all earmarks of the discrimination banned by the regulations." 414 U.S. at 563.

[206]. 20 U.S.C. §1703(f).

approach into practice, including devoting the resources necessary to implement it effectively.[207] Most importantly, the school system must obtain good results: a school system that stays with an ineffective approach illegally denies equal educational opportunity.[208]

The lack of specific service requirements notwithstanding, courts (interpreting the Equal Educational Opportunities Act) and the U.S. Department of Education/Office for Civil Rights (which enforces Title VI) have recognized certain broad features as critical to an effective, legally sufficient program. School systems should have a comprehensive approach to educating limited English Proficient students, including identification of youth not in school, identification of those with a home language other than English, adequate assessment to determine students' ability to read, write and comprehend English, and adequate curriculum, texts and materials. Children must learn to read and write in English, and must receive academic content instruction in a language they understand.[209] Schools must assess students in their dominant language to determine whether they are falling behind academically while English skills are being stressed, and to provide compensatory services as needed.[210]

Staff must have the skills and training necessary to implement the chosen program.[211] Teachers in bilingual programs should be able to speak, read and write both languages, and be fully qualified to teach their subject.[212] Students must have access to all facets of the school's educational program, including Title I (formerly "Chapter 1") services, vocational education and appropriate special education services when necessary.

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[207]. *Castaneda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981); *see also Gomez v. Illinois Bd. of Ed.*., 811 F.2d 1030 (7th Cir. 1987); *Teresa P. v. Berkeley Unified School District*, 724 F. Supp. 698 (N.D. Cal. 1989); *Keyes v. School District No.1, Denver*, 576 F. Supp. 1503 (D. Colo. 1983). Advocates should note that the holdings in *Castaneda* and *Teresa P.* that Title VI requires a showing of discriminatory intent were partially rejected in *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983). While a majority there held that the Title VI statute requires proof of discriminatory intent, a different majority held that the Title VI regulation–specifically, 34 C.F.R. §100.3(b)(2)– permissibly establishes a "disparate impact" or "discriminatory effect" claim.

[208]. *Castaneda, supra*, at 1010.

[209]. *Keyes, supra*, 576 F. Supp. at 1518.

[210]. *Castaneda, supra*, 648 F.2d at 1014. Schools must also have in place a mechanism for assessing the overall results of programs for limited English proficient students. *Keyes, supra*, 576 F. Supp. at 1518. *See also* Memorandum From Michael L. Williams, Assistant Secretary for Civil Rights To OCR Senior Staff Regarding Policy Update on School's Obligations Toward National Origin Minority Students With Limited English Proficiency (U.S. Department of Education September 27, 1991) at 9 (hereinafter "1991 OCR Memorandum").

[211]. *Keyes, supra*, 576 F. Supp. at 1517.

[212]. *Keyes, supra*, 576 F. Supp. at 1516; *Castaneda, supra*, 648 F.2d at 1013. *See also* 1991 OCR Memorandum, *supra*, at 5.

"Exit criteria" for termination of limited English proficient services must ensure that students can read, write and comprehend English well enough to learn successfully in an English-only program. Exit criteria that simply test a student's oral skills are inadequate.[213] In addition, a school's exit criteria should be suspect if, for example, "formerly" limited English proficient students cannot keep up with English speaking peers, need simplified English materials in order to succeed in all aspects of the school's curriculum, or have higher grade retention or dropout rates than do other students.[214] Once "exited," individual students should be monitored for their ability to function in the mainstream.

Enforcement

The U.S. Department of Education/Office for Civil Rights enforces Title VI. An individual or organization believing that a school system is violating its obligations under this law may file an administrative complaint with the appropriate regional office.[215] Title VI may also be enforced through private law suits,[216] as may the Equal Educational Opportunities Act.[217]

Selected Other Education Laws Relevant to Quality Education for Language Minority Students

A number of other federal education statutes speak to the needs of limited English proficient students, including Title I of the Elementary and Secondary Education Act (ESEA), the Carl Perkins Vocational and Technical Education Act, and the School-to-Work Opportunities Act.

Title I of the ESEA requires that any school receiving Title I money make adequate yearly progress toward getting *all* students to meet state performance standards. Title I schools must provide an accelerated curriculum, effective instruction, timely and effective assistance to students when they begin to fall behind, high quality teaching staff and high quality professional development.[218] All of this must be provided in a program developed in partnership with parents.[219] Title I provides that limited

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[213]. *Keyes*, *supra*, 576 F. Supp. at 1518 (noting importance of testing reading and writing as well as oral language skills); 1991 OCR Memorandum, *supra*, at 7.

[214]. 1991 OCR Memorandum, *supra*, at 6.

[215]. For the regulations governing the filing and investigation of OCR complaints, see 34 C.F.R. §100.7.

[216]. *Lau*, for example, was brought by individuals pursuant to Title VI.

[217]. *See* 20 U.S.C. §1706. The U.S. Attorney General may also institute a civil action on behalf of an individual whose rights under the Equal Educational Opportunities Act have been violated. *Id.*

[218]. *See* 20 U.S.C. §§6314, 6315.

[219]. 20 U.S.C. §6318.

English proficient students are eligible for Title I services on the same basis as other children selected to receive services.[220] Further, these students must be held to the same high content and performance standards required of all Title I students, and assessed to determine how well they are progressing toward these standards.[221] Limited English proficient students must be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what they know and can do, in order to determine such students' mastery of skills in subjects other than English.[222] Their parents, to the extent practicable, must be given the opportunity to be full participants in their children's education.

The Perkins Act,[223] which provides for the creation of high-quality vocational education programs that integrate academic and vocational education (including the teaching of advanced academic skills) and teach students about all aspects of the industry they are preparing to enter, prohibits discrimination against limited English proficient students, and requires that they be afforded equal access to all programs.[224] Perkins also mandates that states, local school systems and individual schools plan their vocational education programs to meet the needs of limited English proficient students and enable these students to meet the standards set for all student, and to prepare for further learning and high skill, high wage careers.[225] The School-to-Work Opportunities Act, under which states have created systems intended to provide students with the opportunity to participate in high quality programs that integrate school- and work-based learning, vocational and academic education, and secondary and postsecondary education, explicitly requires that systems and programs be designed to serve *all* students. The law defines "all students" as "both male and female students from a broad range of backgrounds and circumstances, including...students with limited-English proficiency...."[226]

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[220]. Memorandum to Chief State School Officers from the U.S. Department of Education, June 20, 1995.

[221]. 20 U.S.C. §6311.

[222]. *Id.*

[223]. 20 U.S.C. §2301 *et seq.*, as amended by the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. 105-332, 112 Stat. 3076 (October 31, 1998).

[224]. 20 U.S.C. §§2302(23)(F), 2342(c)(8), 2354(b)(8), as amended by the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. 105-332, 112 Stat. 3076 (October 31, 1998).

[225]. 20 U.S.C. §§2302(23)(F); 2323(c)(2), 2342(b)(1), 2342(c)(7), 2342(c)(8)(C), 2342(c)(12), 2344(b)(1), 2344(b)(8), 2354(b)(4), 2354(b)(7), 2355(b)(5), as amended by the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. 105-332, 112 Stat. 3076 (October 31, 1998).

[226]. 20 U.S.C. §6103(2). Note that the School-to-Work Act is scheduled to sunset on October 1, 2001. *See* 20 U.S.C. §6251.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates
9 -- Homeless Children with Disabilities and the Right to a Free Appropriate Public Education

Introduction

Children with disabilities who are homeless are entitled under federal law to special education and related services to the same extent as are all other children with disabilities. Schools may not insist that a child have a fixed address before providing services. Three federal laws – the Stewart B. McKinney Homeless Assistance Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act -- protect this right.

Legal Requirements

The education provisions of the Stewart B. McKinney Homeless Assistance Act address the rights of homeless students.[227] The McKinney Act applies to all states that receive education funds under that statute. Key provisions include the following:

- As a matter of Congressional policy, "each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including preschool education, as provided to other children and youth."[228]

- In regard to *where* a homeless child attends school, the statute provides that the local education agency may continue the child's education in his or her school of origin for the remainder of the school year (or, if the family becomes homeless over the summer, for the following academic year), *or* enroll the child in any school that non-homeless students living in the attendance area in which the child is actually living are eligible to attend. This decision must be based on the best interests of the child and, unless not feasible, the school system must comply with the parent's preference regarding school selection.[229]

- Homeless children must be provided services comparable to those offered other students, including "educational services for which the child or youth meets the eligibility criteria, such as...educational programs for children

[227]. *See* 42 U.S.C. §§11431 - 11435.

[228]. 42 U.S.C. §11431(1).

[229]. 42 U.S.C. §11432(g)(3).

with disabilities."[230]

> For purposes of the McKinney Act, someone is "homeless" if they lack a fixed, regular, adequate nighttime residence, or if their primary nighttime residence is a shelter, an institution that provides temporary residence for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation.[231]

Furthermore, IDEA requires that a free appropriate public education be available to *all* children with disabilities residing within the *state*.[232] The IDEA regulations explicitly point out the obligation to serve children who are homeless, in the context of delineating child find requirements.[233] In addition, the U.S. Department of Education/Office for Civil Rights has stressed that the right to a free appropriate public education under the section 504 regulations extends to children with disabilities who are homeless.[234]

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[230]. 42 U.S.C. §11432(g)(4).

[231]. 42 U.S.C. §11302(a).

[232]. 20 U.S.C. §1412(a)(1).

[233]. *See* 34 C.F.R. §300.125(a)(2)(i).

[234]. See, *e.g.*, *Stockton (CA) City Unified School District*, 20 Individuals with Disabilities Education Law Reports ("IDELR") 27 (U.S. Department of Education/Office for Civil Rights 1/28/93), and *Des Moines (IA) Independent Community School District*, 18 IDELR 323 (U.S. Department of Education/Office for Civil Rights 9/10/91).

#10 -- Federal Civil Rights Laws and Peer Disability Harassment in School

Introduction

On July 25, 2000, the U.S. Department of Education's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) issued a "Dear Colleague" letter on the topic of disability harassment in schools, colleges universities and other educational institutions.[235] The letter explained that disability harassment may violate rights under Section 504 of the Rehabilitation Act and/or Title II of the Americans with Disabilities Act when harassing conduct (whether by students or staff) is sufficiently severe, persistent or pervasive that it creates a hostile environment, adversely affecting the student's ability to participate in or benefit from the educational program.[236] It went on to explain that, as a 504/Title II matter, "[w]hen disability harassment limits or denies a student's ability to participate or benefit from an educational institution's programs or activities, the institution must respond effectively," and that "[w]here the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately."[237] The letter further noted that "harassment...based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE [free appropriate public education]" under the Individuals with Disabilities Education Act, §504 and Title II.[238]

The letter does not discuss in detail the legal rules regarding schools' obligations to address disability harassment, or the circumstances under which students may hold schools liable for harassment based upon disability. Nor has there been much litigation in this area.[239] However, the Department's Office for Civil Rights (OCR) has developed and published in the *Federal Register* detailed policy and investigative guidance on

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[235]. The July 25, 2000 letter, issued over the signatures of Assistant Secretary for Civil Rights Norma V. Cantú and Assistant Secretary, Office of Special Education and Rehabilitative Services Judith E. Heumann, is available on the Department's website at <www.ed.gov/offices/OSERS/ADA/Disability_Harassment.pdf>.

[236]. Letter of July 25, 2000 at 3.

[237]. *Id.* at 4.

[238]. *Id.* at 5.

[239]. For one of the apparently few federal cases raising a hostile environment disability harassment claim under Section 504 (as well as under Title III of the ADA), see *Guckenberger v. Boston University*, 957 F. Supp. 306 (D. Mass. 1997).

harassment based upon race, and upon sex. These two guidance implement, respectively, Title VI of the Civil Rights Act of 1964,[240] which prohibits race and national origin discrimination in federally-funded programs, and Title IX of the Education Amendments of 1972,[241] which prohibits sex discrimination in federally-funded education programs.[242] In addition, the Supreme Court recently issued a decision addressing school board liability for damages under Title IX for sexual harassment of students by other students. As Section 504 expressly incorporates Title VI rights and remedies,[243] and Title IX similarly was modeled upon Title VI,[244] legal principles regarding racial and sexual harassment developed under Titles VI and IX are instructive in regard to disability harassment.[245] In order to assist parents and their advocates in understanding schools' legal obligations when students with disabilities are harassed by peers, this topic brief introduces key concepts from OCR's Title VI and Title XI guidances most relevant to the issue of peer disability harassment.[246] It then briefly discusses the Supreme Court case on damages noted above.

OCR Guidances on Racial and Sexual Harassment

The Title VI guidance was issued in 1994, and the Title IX guidance in 1997. They are explanations by OCR, as the entity responsible for enforcing these laws, of schools' legal obligations and the circumstances under which OCR will deem those obligations -- and the pertinent law -- to have been breeched, potentially triggering enforcement action by OCR. Both apply to elementary schools, secondary schools, colleges, universities and any other educational institution that receives federal funds.[247]

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[240]. 42 U.S.C. §2000d.

[241]. 20 U.S.C. §1681.

[242]. *See* Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11448 (March 10, 1994) (hereinafter "Title VI Guidance"), and Office for Civil Rights; Sexual Harassment Guidance; Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034 (March 13, 1997) (hereinafter "Title IX Guidance"). Both documents are posted on OCR's website, and can be found at <www.ed.gov/offices/OCR/ocrprod.html>.

[243]. *See* 29 U.S.C. §794a.

[244]. *See Cannon v. University of Chicago*, 441 U.S. 677, 694-96, 99 S. Ct. 1946, 1956-57 (1979).

[245]. Indeed, the Department's July 25, 2000 letter explicitly references the Title VI and Title IX guidances. *See* Letter of July 25, 2000 at 2, n.3. Also relevant is the identical language used in the three statutes, and the similar language found in Title II of the ADA. *Compare* 29 U.S.C. §794(a), 42 U.S.C. §2000d, 20 U.S.C. §1681, and 42 U.S.C. §12132.

[246]. The Title VI and Title IX guidances address harassment by employees and third parties as well as by other students. Advocates representing students facing disability harassment by school staff thus will find them instructive as well.

[247]. As of September, 2000, OCR was in the process of updating the Title IX Guidance, in light of the Supreme Court's subsequent decisions in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 119 S. Ct. 1661 (1999), regarding damages actions against schools for peer harassment (discussed below) and *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S. Ct. 1989 (1998)

1. ***Standard for liability:*** The OCR guidances provide that a school violates Title VI or Title IX if it accepts, tolerates or fails to correct, respectively, a racially or sexually hostile environment of which it knows or should have known.[248] Put another way, a school will be found liable for racial or sexual harassment by its students if (i) a hostile environment exists in the school's programs or activities, (ii) the school knows or should have known of the harassment, and (iii) the school fails to take immediate and appropriate corrective action.[249]

2. ***Hostile environment harassment defined:*** A hostile environment is created when harassing conduct is sufficiently severe, pervasive *or* persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the education program, or to create an abusive educational environment.[250] Conduct that is sufficiently severe can result in a hostile environment even if it is not pervasive or persistent.[251]

3. ***Severe, Persistent or Pervasive:*** Whether harassing conduct creates a hostile environment depends upon such factors as the context, nature, scope, frequency, duration and location of the incidents; the identity, number and relationships of the persons involved; and the age, impressionability and other particular characteristics and circumstances of the targeted student and student witnesses of the conduct.[252] The conduct must be considered from both a subjective and an objective perspective.[253] In order for a hostile environment to exist, the conduct must have limited the ability of a student to participate in or benefit from his or her education, or altered the condition of the student's educational environment. This standard does not necessarily require that the student suffer *tangible* injury.[254]

4. ***Notice:*** As noted above, a school violates Title VI and Title IX if it has notice of a hostile environment and fails to take immediate, appropriate corrective action. A

(regarding damages actions for harassment by school staff) . It is anticipated that the revised Guidance will be published for comment in the *Federal Register* in the near future.

[248]. Title VI Guidance at 11449 ("actual or constructive notice"); Title IX Guidance at 12039-40.

[249]. Title VI Guidance at 11449, 11450; Title IX Guidance at 12039.

[250]. Title VI Guidance at 11449; Title IX Guidance at 12041.

[251]. Title VI Guidance at 11449; Title IX Guidance at 12041.

[252]. Title VI Guidance at 11449; Title IX Guidance at 12041-12042.

[253]. Title IX Guidance at 12041.

[254]. Title IX Guidance at 12041 ("[f]or example, a student may have been able to keep up his or her grades and continue to attend school even though it was more difficult...to do so because of the harassing behavior...Harassing conduct in...[this example] alters the student's educational environment on the basis of sex.").

school has notice if it actually knew or, in the exercise of reasonable care (including reasonably diligent inquiry) should have known about the harassment.[255] In some cases, the pervasiveness, persistence or severity of the harassment may be enough to conclude that the school should have known of the hostile environment.[256] Both the Title VI Guidance and the Title IX Guidance include examples of actual and constructive notice.

5. ***Response:*** Once a school has notice of a racially or sexually hostile environment, it must take reasonable steps to end any harassment, prevent its recurrence, and eliminate the hostile environment.[257] This must be done regardless of whether the student who has been harassed makes a complaint or otherwise asks school officials to intervene.[258] The school's response must be tailored to address the consequences of the harassment, to the institution and the individual.[259]

Private Action for Damages: Davis v. Monroe County Board of Education

In *Davis v. Monroe County Board of Education*,[260] the Supreme Court held that, under Title IX, school systems that receive federal education funds may be held liable for damages for peer sexual harassment "where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." The opinion makes clear that this standard applies only to whether an aggrieved student may bring a private action for damages – not to the question of whether the school has violated Title IX. Thus enforcement actions by OCR as well as private lawsuits seeking injunctive, declaratory or other equitable relief are not affected by *Davis*. Rather, they are governed by the principles set forth in the Title IX Guidance and the legal precedents upon which it rests.[261]

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[255]. Title VI Guidance at 11450; Title IX Guidance at 12042.

[256]. Title VI Guidance at 11450; Title IX Guidance at 12042.

[257]. Title VI Guidance at 11450; Title IX Guidance at 12042-43.

[258]. Title IX Guidance at 12042.

[259]. *See* Title VI Guidance at 11450; Title IX Guidance at 12043.

[260]. 526 U.S. 629, 650, 119 S. Ct. 1661, 1675 (1999).

[261]. The same holds true in regard to harassment by teachers and the scope of the Supreme Court's decision in *Gebser*, *supra*. *Gebser* held that a school system may be held liable for damages for sexual harassment of a student by a teacher where an official of the school district with the authority to take corrective action on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct. Again, this is a standard for the recovery of monetary damages, and not the standard for determining whether a Title IX violation has occurred – and so whether an aggrieved student is entitled to some other form of relief, or whether OCR may take enforcement action.

Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates

11 -- Reviewing and Correcting Education Records

Introduction

The Family Educational Rights and Privacy Act ("FERPA") and the regulations implementing it give parents and older students tools for reviewing, understanding and correcting education records. FERPA applies to public and private educational agencies and institutions that receive funds from the U.S. Department of Education. The Individuals with Disabilities Education Act ("IDEA"), the IDEA regulations, and the regulations implementing Section 504 of the Rehabilitation Act of 1973 also address parent and student access to education records.

Reviewing Records

IDEA , the §504 regulations and FERPA all guarantee parents the right to inspect and review education records concerning their children.[262] The IDEA and FERPA regulations on this topic go into greater detail than do the §504 regulations which, for example, do not define "record" and do not detail the scope of access rights.[263] However, it is important to remember that FERPA rights apply to *all* parents and students, regardless of whether the student is eligible for services under IDEA, or even has a disability. Thus parents of children who are protected by §504 but not by IDEA enjoy the full range of access rights afforded by FERPA.

Under both IDEA and FERPA, school systems must honor a request to review education records without unnecessary delay; in no event can a system take more than 45 days to comply.[264] IDEA further provides that education records must be made available before any meeting concerning an individualized education program ("IEP"), before any IDEA due process hearing, and in connection with certain disciplinary matters.[265]

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[262]. 20 U.S.C. §1415(b)(1); 20 U.S.C. §1232g(a)(1)(A); 34 C.F.R. §§300.501(a)(1), 300.562-300.569; 34 C.F.R. §104.36; 34 C.F.R. §§99.10 - 99.12.

[263]. The §504 regulations do provide, however, that compliance with IDEA access requirements will fulfill §504 requirements. *See* 34 C.F.R. §104.36.

[264]. 34 C.F.R. §300.562(a); 34 C.F.R. §99.10(b).

[265]. 34 C.F.R. §300.562(a).

For purposes of IDEA and FERPA, "education records" means those records that are directly related to a student.[266] "Record," in turn, means any information recorded in any way and includes, among other things, handwriting, print, tape and film.[267] Upon request, a school system must provide parents with a list of the types and locations of the education records it collects, maintains or uses.[268]

Access rights, or the right to inspect and review records, include the rights to:

- receive a response from school officials to reasonable requests for explanations and interpretations of the records;
- have a representative of the parent inspect and review the records; and
- obtain copies of records, if a lack of copies would effectively prevent the parent from exercising the right to inspect and review the records.[269]
- A school system may not charge a fee for copies if the fee would effectively prevent the parent from exercising the right to inspect and review the records, and in no event can the system charge for searching for or retrieving records.[270]

Either parent, including a non-custodial parents, may review and inspect records under both laws, unless that right has been revoked by state law, court order or other legally binding document relating to matters such as divorce, separation, custody or guardianship.[271]

FERPA grants all of the above rights to students who have reached age 18 or are in postsecondary education. When a student thus becomes eligible to exercise FERPA rights himself, these rights transfer from the parent and become the student's, exclusively.[272] In addition, under IDEA many rights, including the above, ordinarily

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[266]. 34 C.F.R. §99.3, incorporated into the IDEA regulations by reference at 34 C.F.R. §300.560(b). Note that FERPA's definition of the "educational records" that parents have a right to inspect and review excludes some kinds of material, including records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record; records of the law enforcement unit of an educational agency or institution; certain records relating to employees of an educational agency or institution; and certain records regarding students who are 18 years of age or older, or who are attending an institution of postsecondary education. See 34 C.F.R. §99.3.

[267]. *Id.*

[268]. 34 C.F.R. §300.565.

[269]. 34 C.F.R. §300.562(b); 34 C.F.R. §99.10(c), (d)..

[270]. 34 C.F.R. §300.566; 34 C.F.R. §99.11.

[271]. 34 C.F.R. §300.562(c); 34 C.F.R. §99.4.

[272]. 34 C.F.R. §§99.1, 99.5.

transfer from parent to student when the student reaches the age of majority under state law.[273]

Correcting Records

Under FERPA, parents or older students who find that an education record is wrong or misleading have the right to ask the school to change the record. They also have the right to ask for changes if what is in the record violates the student's privacy or other rights.[274] If the school will not make the changes, parents or students have the right to a hearing.[275] If the parent or student proves at the hearing that the record contains improper information, the school must correct it.[276] Parents and students who do not win at the hearing have the right to put a written statement in the student's education record explaining their point of view.[277] The school must keep this statement in the student's education record at all times, and disclose it whenever it discloses the portion of the record to which the statement relates.[278]

Enforcing Rights

Parents and students who believe that their IDEA rights regarding access to records have been violated may invoke any of the IDEA procedures ordinarily available to vindicate IDEA rights, including requesting a due process hearing, filing a complaint with the state education agency and bringing an action in court.[279] A complaint that the Section 504 regulation requiring access to records has been violated may be filed with the appropriate regional office of the U.S. Department of Education/Office for Civil Rights, and may also be the subject of a lawsuit. Written complaints regarding FERPA violations may be filed with the Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605.[280] Depending upon the circumstances, it may also be possible to bring a lawsuit when FERPA rights are violated.[281]

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[273]. In regard to access to education records in particular, see 34 C.F.R. §300.574(c).

[274]. 20 U.S.C. §1232g(a)(2); 34 C.F.R. §99.20(a).

[275]. 20 U.S.C. §1232g(a)(2); 34 C.F.R. §99.21(a).

[276]. 20 U.S.C. §1232g(a)(2); 34 C.F.R. §99.21(b).

[277]. 20 U.S.C. §1232g(a)(2); 34 C.F.R. §99.21(b)(2).

[278]. 20 U.S.C. §1232g(a)(2); 34 C.F.R. §99.21(c).

[279]. *See* 20 U.S.C. §1415(b)(6), (f), (g), (i)(2); 34 C.F.R. §§300.660 - 300.662.

[280]. *See* 34 C.F.R. §§99.60 - 99.67.

[281]. While a number of courts have held that there is no private right of action to enforce FERPA, a number have held that individuals whose FERPA rights have been violated may bring a damages action under 42 U.S.C. §1983 against the offending educational agency or institution. *See, e.g., Tarka v. Cunningham*, 917 F.2d 890 (5th Cir. 1990); *Fay v. South Colonie Central School District*, 802 F.2d 21, 33 (2d Cir. 1986); *Maynard v. Greater Hoyt School District*, 876 F. Supp. 1104 (D.S.D. 1995); *Belanger v.*

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Students with Disabilities and the Right to Due Process in School Discipline

In the area of school discipline eligible students with disabilities not only have significant rights under the Individuals with Disabilities Education Amendments of 1997. 20 U.S.C. 1412(a)(1)(A), 1415(j), 1415(k), the right not to be discriminated against under Section 504 of the Rehabilitation Act , 29 U.S.C. 7994, 34 C.F.R. 104.4(b), but, as all other students attending public education programs, they possess basic constitutional protections. Entitlement to public education has long been recognized as a property interest protected by the Due Process clause of the Fourteenth Amendment to the U.S..Constitution. *Goss v. Lopez*, 419 U.S. 565, 573-75 (1975).

A. Procedural Due Process

1. Whether Due Process Protections Apply: Protected Property Interests

Under the due process clause of the Fourteenth Amendment states may not deprive any person of life, liberty, or property without due process of law. Protected property rights are created by such sources as state statutes granting persons certain benefits. See *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). In *Goss v. Lopez*, the seminal case establishing the due process rights of students in public school disciplinary proceedings, the Supreme Court held that students had a property interest in education that required minimal due process protections before any disciplinary suspension could be imposed. 419 U.S. 565, 573. The Court found that the property interest in education derived from an Ohio state statute providing free public education to all children from 5 though 21 years and requiring compulsory education for a minimum of 32 weeks per school year. Id., at 573. Virtually all states have similar state laws entitling children to the benefits of public education and compelling attendance. Based on *Goss*, therefore, students have a property interest in public education that cannot be denied or otherwise taken away through disciplinary suspension or expulsion without due process of law. 419 U.S. at 574.

Nashua NH School District, 856 F. Supp. 40 (D.N.H. 1994); *Krebs v. Rutgers*, 797 F. Supp. 1254 (D.N.J. 1992). *But see also, e.g., Norris v. Bd. of Ed. of Greenwood*, 797 F. Supp. 1452, 1465 (S.D. Ind. 1992).

In *Goss* the Court rejected the school district's defense that the suspension was too short to be significant, finding the interest a protected one: "in determining 'whether due process requirements apply in the first place, we must look not to the "weight" but to the nature of the interest at stake.' " *Id. at 575-76* (emphasis in original) (quoting *Board of Regents v. Roth, 408 U.S. 564, 570-71 (1972).* The *Goss* Court held that when a student is threatened for disciplinary reasons with possible suspension and other punishments affecting access to education, the student must receive *oral or written* notice of the charges against him, an explanation of the facts against him, and an opportunity to present his side of the story. *Id.*, at 581. The Court did not require that a formal hearing be held, suggesting that such a hearing would be expensive and would harm the effectiveness of the teaching process. *Id.*, at 583.

Consistent with *Goss*, courts have determined that when sanctions effectively deny students access to education, students are deprived of protected property rights, and thus, must be provided due process protections. See, *e.g., Gorman v. University of Rhode Island*, 837 F.2d 7, 12 (1st Cir. 1988) (long-term suspension affected student's interest in pursuing education that is protected by the Fourteenth Amendment); *Cole v. Newton Special Municipal Separate School District*, 676 F.Supp. 749, 752 (S.D. Miss. 1987), *aff'd without opinion* 853 F.2d 924 (5th Cir. 1988)(suspension followed by in-school isolation in an alternative setting for remainder of term; relying on *Goss* for the proposition that exclusion from the educational process is the key issue). The district court in Cole stated: "The primary thrust of the educational process is classroom instruction; therefore minimum due process procedures may be required if an exclusion from the classroom would effectively deprive the student of instruction and the opportunity to learn." 676 F.Supp. At 752.

On the other hand, in *Zamora v Pomeroy*, 639 F.2d 662 (10th Cir. 1981), the appellate court held that the temporary removal and assignment of a student to an alternative educational school did not rise to a constitutional violation and thus did not invoke the court's jurisdiction. Id., at 670. It is noteworthy that the court only reached this conclusion after finding that the plaintiff student's basic due process rights had been met and were satisfied. Id., at 668. Considering the seriousness of the infraction by the student who had been found in possession of marijuana, the court ruled that because the plaintiff was continuing to receive education, and was not deprived of any benefit other than removal from the baseball team, that the disciplinary sanction did not violate a protected interest. At 670. Similarly, in *Navarez v. San Marcos Consolidated Independent School District*, 111 F.3d 25, 26-27 (5th Cir. 1997), the Court of Appeals for the Fifth Circuit found that there is no property right to participate in a particular curriculum and thus, transfer to another school for disciplinary reasons does not invoke federal court jurisdiction. Id., 26-27. Again, the court found that a constitutional question was not raised because the student was never denied access to public education. *Id.*

More recently, in a case where a student was subjected to a short suspension of three days, a court, nonetheless, looked first to the cumulative effect of the suspension and other sanctions on the student's access to education. Next the court indicated that if a

student's being denied access to education meant being unable to participate in class discussion, to hear class lectures, to take notes in preparation for exams, such loss of meaningful opportunity might rise to a deprivation of a property interest and, therefore, require procedural due process protections. In assessing whether constitutional protection were warranted, the court held that the entire punishment imposed on the student must be considered as a whole, not as separate elements. Accordingly, in *Riggen v. Midland Independent School District*, MO-99-CA-66 (W.D. Tx. 2/23/2000), the court held that the "entire punishment of three days suspension, five days assignment to [Alternative Education program], and requiring two letters of apology [as a condition of participating in graduation exercises], is sufficient to implicate his protected property interests in education and invoke minimum Due Process protections,..." although the plaintiff was not expelled and only received a short suspension. *Id.*, at 22. Citing *Goss v. Lopez*, 419 U.S. at 576 : "Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation , which is also implicated, is so insubstantial that suspension may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary."

2. What Process Is Due?

Concluding that the impact of suspensions on protected interests was "not *de minimis*" (at 419 U.S. at 576), the Court in *Goss* addressed the issue of what process is due. It detailed the form of notice and hearing generally applicable in suspensions of up to ten days to avoid "unfairness or mistaken findings of misconduct. . ." (*id.*, 419 U.S. at 581). The notice must inform the student of "what he is accused of doing and what the basis of the accusation is," *id. at 582*, and that the hearing must provide the student with "an opportunity to present his side of the story," *id. at 581*. By definition, a due process hearing requires an impartial decision maker. *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir. 1988). Moreover, where the fact of misconduct is not in dispute, a student must still have "the opportunity to characterize....conduct and put it in what he deems the proper context." *Id.*, 419 U.S. at 584. This latter point is significant - even when there is no dispute as to the existence of misconduct, as when a student has admitted the act at issue, the student has a right to a hearing on the appropriateness of the penalty, for "things are not always as they seem to be....." *Strickland v. Inlow*, 519 F.2d 744, 746 (8th Cir. 1975), *quoting Goss*, 419 U.S. at 584. See also, *Colvin v. Lowndes County, Mississippi School District,* N.D.Miss. 2/24/2000; court relied on *Lee v. Macon*, 490 F.2d 458 (5th Cir. 1974) to *vacate* expulsion finding formalistic acceptance of principal's request as to scope of punishment without independent Board consideration on penalty to be less than full due process; student with ADHD whom school had failed to evaluate, despite knowledge, challenged expulsion under 'zero tolerance' policy; court found no basis for overturning 'no manifestation determination', but found violation of due process when school board had failed to exercise independent consideration of facts and circumstances of student's case prior to invoking punishment.

In ruling that any student suspended for a period of ten days or less was entitled to oral or written notice of the charges against him, an explanation of the evidence against him,

and an opportunity to be heard, the *Goss* Court acknowledged that the notice and hearing may occur simultaneously, but, unless a student's "presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process", the "notice and hearing should precede removal of the student from school." *Id.*, 419 U.S. at 582. In those limited instances "the necessary notice and rudimentary hearing should follow as soon as practicable...."*Id.*, 419 U.S. at 582-83.

The Court acknowledged the importance of leaving education in the hands of local authorities, the need for suspension as a disciplinary tool, and the interests of the school in maintaining efficiency and control. *Id.*, at 577-83, but underscored that one-sided procedures were imperfect and risked unfairness. Id., 419 U.S. at 581. The Court did not go so far as to require an opportunity "to secure counsel, to confront and cross examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident." *Id.*, 429 U.S. at 583. Rather, consistent with the facts before it, the Court only addressed suspension *not in excess of ten days,* and set forth guidelines as the minimum process required for the imposition of short suspensions in school disciplinary matters. There was nothing to indicate that the Court considered these limited procedures exhaustive. To the contrary, the Court allowed that the Due Process clause is practical; thus, depending upon the nature of the case, more formal procedures may be required "in unusual situations, although involving only a short term suspension...." *Id.*, 419 U.S. at 584. See, *e.g., Riggen v. Midland* Independent School District, MO-99-CA-66, (W.D. Tx. 2/23/2000) [2000 U.S. Dist. Lexis 2639].

3. When Are More Rigorous Procedures Required?

As *Goss* recognized, certain unusual cases involving short-term suspensions may necessitate greater protections, and "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. " *Id.*, 419 U.S. at 584; *Jackson v. Franklin County School District*, 806 F.2d 623, 631 (5th Cir. 1986). The type of notice and kind of hearing, the rights accorded the student at the hearing and the formality of the hearing depend upon the nature of the charge and the seriousness of the penalty. Goss, 419 U.S. at 578-80, 584; *Mathews v. Eldridge, 424 U.S. 319, 333-35 (1976).*

In *Mathews v. Eldridge,* decided a year after Goss, the Court set forth three factors for consideration in resolving the question: what process is due? The three factors are: the seriousness of the property or liberty deprivations, i.e., the private interest that will be affected by the official action; the risk of erroneous deprivation of a protected interest if the existing procedures are used, and the value, if any, of using additional or alternative procedural safeguards; and last, the government's interest, including the function involved, and the fiscal and administrative burdens of undertaking additional/alternative procedures. The Court's three part balancing test requires greater procedural rights as the severity of the deprivation increases. Yet, few courts, after applying the *Mathews* test in the context of lengthy suspensions and expulsions, and thus, balancing the student's private interest and the school's public interest to determine if due process requires trial type procedures, have ruled in such way. Instead, the courts have

suggested that the value of such trial-type rights, including the right to confront and cross examine witnesses, is minimal. See, *e.g., Newsome v. Batavia*, 842 F.2d 920 (1989) Or,.courts have found the additional procedures are either too cumbersome and intrusive into the educational process, or would not reduce significantly the risk of an erroneous deprivation of rights." *Jaska v. Regents of University of Michigan*, 597 F. Supp. 1245, 1254 (E.D. Mich. 1984), aff'd, 787 F.2d 590 (6th Cir. 1986).

A substantial body of law has developed as parties seek to contest the specific elements of due process that are in fact due. There is disagreement as to what procedural protections school officials should provide students who are expelled from school. For the most part, courts have been reluctant to expand students' procedural rights. See e.g., *Newsome v. Batavia Local School District*, 842 F.2d 920, 924 (6th Cir. 1988) Recently, for example, the Eighth Circuit Court of Appeals admonished that courts should exercise "care and restraint" in reviewing a school's disciplinary decisions for due process violations: "Although students do not shed their constitutional rights at the schoolhouse gate, the Supreme Court has observed that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures. Given the flexibility afforded schools in this area, we must enter the realm of school discipline with caution." *Woodis v. Westark Community College*, 160 F.3d 435, 438 (8th Cir.1998)(citations omitted).

One federal appellate court ruled that a student expelled for the remainder of a semester on drug allegations was not entitled to cross-examine student accusers, learn their identities, or cross-examine school officials. *Newsome v. Batavia Local School Dist.*, 842 F.2d 920, 924-26 (6th Cir. 1988) That court also approved the participation of the investigating administrators in the closed deliberations of the school board -- deliberations the student and his attorney were not allowed to attend. *Id, at 926-27.* The court did find a due process violation, however, because the closed deliberations included new evidence not divulged to the student. *Id. at 927.*

On the other hand, a recently decided case, *Riggan v. Midland Independent School District*, MO-99-CA-66, W.D>Tx. 2/23/2000) was characterized by the court as one of the "*unusual*" cases involving a short-term suspension that requires something more than rudimentary procedures. In this case, a high school student challenged the cumulative disciplinary sanctions imposed upon him (3 days' suspension, placement in a separate alternative education program apart from his peers, class instruction, graduation conditioned on writing letter of apology), after being accused by the principal of having taken a photograph of the principal's automobile parked outside the home of a female teacher, being the source of rumors of a sexual nature, making for distribution T-shirts with photograph of principal. The court denied, in part, the school district's motion for summary judgment, finding that issues of material fact were successfully raised by the student who argued that he was denied the right to adequate prior notice informing him of the charges against him, to have a meaningful opportunity to present evidence and to present witnesses; the right to prior notice of the school's evidence against him and to review evidence being relied upon; right to a decision-maker who is unbiased, right to a fair hearing (untainted by bias); right to confront and cross examine witnesses;

right to review through grievance procedure that was capable of curing prior denials of rights; right to have proper presumption/burden of proof apply; right not to incriminate oneself right to First Amendment protections.

Because some states statutorily mandate rather extensive safeguards, including a right to legal counsel, examination of records, presentation of evidence, and cross-examination of witnesses, it is important that attorneys representing students in school discipline matters examine their state laws.

> Due Process and the Potential Conflict with the Manifestation Determination Provision under the Individuals with Disabilities Education Amendments of 1997

The IDEA Amendments of 1997, 20 U.S.C. 1400 et seq., expressly address disciplinary exclusion for the first time. The Act includes discipline provisions pertaining to students with disabilities who are found in possession of weapons or illegal drugs [20 U.S.C. 1415(k)(1), (2)], the rights of those students who have not yet been identified as eligible under the IDEA [20 U.S.C. 1415(k)(8)]; students who are suspended for ten school days or less [20 U.S.C. 1415(k)(1)(A)(i)]; and, those students who are unable to demonstrate that a manifestation exists between their behavior and disability. [20 U.C.S.1415(k)(4), (5).]

Because all students with disabilities enjoy a protected property interest in public education, they are entitled to procedural due process protections under the Fourteenth Amendment in any discipline related matter that results in the denial of access to education. The constitutional right to procedural due process is raised whenever a student with a disability is subject to exclusion from school through suspension, expulsion or other removal under the IDEA, including, arguably through "changes in placement," and transfers to "interim alternative education placement." While the right to procedural due process in most instances supplements federal statutory protections under the IDEA Amendments of 1997, a potential area of conflict exists for children with disabilities whose behavior is subject to a manifestation review to the degree it is assumed that the student whose behavior is the subject of the review, has, in fact, performed the conduct or behavior.

Under section.1415(k)(4) before school personnel can exercise their enhanced authority to exclude any student with a disability, who violates school rules or the discipline code, to the same extent as a non-disabled student is sanctioned, they must determine whether or not the behavior or conduct at issue is related to the student's disability. 20 U.S.C. 1415(k)(4), (5). The manifestation review must be conducted within ten days of the incident by the IEP team and other qualified persons who can make a finding of *no* manifestation only after considering all relevant information, including evaluation and diagnostic results, and any information from the child's parent, observations about the child, the child's IEP and placement; and then determines that the IEP and placement are appropriate and special education and related services consistent with the child's IEP are being implemented. 1415(k)(5)(A). The manifestation review team must ensure that the child's disability did not impair his/her ability to understand the impact and

consequences of the behavior that is subject to disciplinary action or impair the ability of the child to understand the impact and consequences of the behavior at issue. 1415(k)(4)(C).

If no manifestation is found to exist between the student's behavior and his/her disability, the student with the disability can be subject to the same disciplinary exclusion, including exclusionary suspension and expulsion, as non-disabled youth. 20 U.S.C.1415(k)(5).(A). [Note, however, section 1412(a)(1)(A) creates an ongoing duty to provide the child with the disability their right to a free appropriate public education. 20 U.S.C.1412(A)1)(A).]

The manifestation review, by its very nature and purpose, is at odds with the constitutional right to procedural due process in school discipline. Due process requires that any student who may be subject to a sanction that deprives the student of his/her property interest in education, has a right to be informed of the charges against him/her, and an opportunity to be heard and to tell his/her side of the story. As discussed above, the more serious the nature and severity of the sanction, the greater the rights accorded the student, including, e.g., to counsel, to confront and cross examine witnesses. On the other hand, the manifestation review team begins with the assumption that the student, whose *behavior* is being examined, has, in fact, engaged in the behavior or misconduct that is at issue. The manifestation team's inquiry is directed at whether the offending behavior is related to the student's disability, whether the student's IEP identified this need and was developed to address this issue and, if yes, whether the IEP was being implemented. Consequently, to protect a student's constitutional due process rights under *Goss*, as well as more extensive protections that the student would presumably be entitled in this situation, e.g., the student's right not to incriminate him/herself, the student must be provided a separate and prior opportunity to be heard, and to refute the allegations against him/her with such safeguards as commensurate with the nature and severity of the charges. Moreover, at least where there is a factual dispute about whether the student did or did not engage in the conduct or activity, this issue should arguably be fully resolved through the appeal level, if necessary, prior to any manifestation determination that assumes the student's guilt, i.e., that he engaged in the conduct that is at issue, thereby tainting the hearing and any further proceedings.

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Including Students with Disabilities in Standards Based Education Reform

Kathleen B. Boundy *revised January 2000

As states and school districts move toward full implementation of standards based education reform, a real opportunity exists for students with disabilities, their parents, advocates, and educators from pre-school classrooms through school-to-work programs to ensure a high quality education for all students.

In explicit legislative findings codified in the IDEA Amendments of 1997[282], Congress criticized the nation's education system for its more than 20 year history of low expectations of students with disabilities, its failure to disseminate what is known and has been learned and to implement research based practices for effectively educating students with disabilities. While the IDEA Amendments of 1997, in fact, give students with disabilities few new rights, Congress clarified and, in doing so, emphasized the rights of these students to receive high quality public education consistent with State education standards.[283] In addition, the IDEA Amendments stress the right of students with disabilities to participate fully in the general curriculum with their non-disabled peers,[284] and to be provided real opportunities to learn through specialized instruction, supportive services, supplemental aids and benefits, including services and training for teachers[285] to enable their students to meet, in whole or in part, the standards expected to be met by all other students. Students' individualized education programs (IEPs) are expected to be used, *as they were intended*, as critical tools to achieve educational goals: the IEP must be shaped by evaluations of disability related educational needs and consistent with State standards, goals, objectives,[286] *and* State of the art practices.[287]

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[282]. 20 U.S.C. 1400(c)(4) (1997).

[283]. 20 U.S.C. 1401(8), 1412(a)(1).

[284]. 20 U.S.C. 1412(a)(5)(A), 1414(d)(1)((A)(i)(I), (ii)(I), (iii)(II),(III), (iv).

[285]. 20 U.S.C. 1414(d)(1)(A)((iii).

[286]. 20 U.S.C. 1414(d)(1)A)(i)(I), (ii)(I), (iii)(I).

[287]. 20 U.S.C.1412(a)(14) incorporating by reference 20 U.S.C.1453(c) (3)(D)(vii), regarding "State of the art" requirement.

Standards based education reform is designed to improve the quality of students' educational outcomes by identifying desired knowledge and competencies and aligning curricula and instruction to achieve this improvement. Critical to effective school reform is measuring whether schools and local educational agencies (LEAs) are making progress toward enabling all students to meet challenging State standards, and holding schools and LEAs accountable, in part, through public reporting requirements. Given the poor history of ensuring that students with disabilities participate in the general curriculum and receive the content provided all other children[288], it is essential they be included in any standards based education reform initiatives. Their inclusion in standards based education reform is mandated under Goals 2000: Educate America Act, Title I of the Elementary and Secondary Education Act, the School-to-Work Opportunities Act and the IDEA Amendments of 1997. Moreover, once a State has adopted this strategy for improving the quality of education, as evidenced, for example, by identifying and agreeing upon desired knowledge and competencies that students are expected to know and be able to do, aligning curricula and instruction with these content and performance standards, measuring whether LEAs are making progress in enabling all students to meet the challenging standards and holding States and school districts accountable, in part, through reporting requirements, then all these components must be applied to or include students with disabilities.[289] Any failure to provide students with disabilities the benefits of standards based education violates Section 504 of the Rehabilitation Act of 1973[290] and the Americans with Disabilities Act[291] as well as section 1412(a)(16) of the IDEA Amendments of 1997.

Because States and school districts are required to establish a single set of standards that embrace all students,[292] they must develop a broad umbrella of standards that encompass supplemental educational needs, including, e.g., functional or independent living skills, of even those students with the most severe cognitive disabilities.[293] These students, who comprise a very *small* percentage of students with disabilities, may be unable to attain the levels of proficiency expected for all other

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[288].20 U.S.C. 1400(c)(4), (5)(A)-(E)(i); see also, *Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind,* National Council on Disability, January 2000.

[289]. A more detailed discussion of this topic can be found in "Students with Disabilities and the Implementation of Standards-Based Education Reform: Legal Issues and Implications," Eileen Ordover, Kathleen B. Boundy and Diana C. Pullin, prepared for Committee on Goals 2000 and the Inclusion of Students with Disabilities, National Research Council, National Academy of Sciences, June 12, 1996.

[290]. 29 U.S.C. 794.

[291]. 42 U.S.C. 12132.

[292]. Goals 2000: Educate America Act, 20 U.S.C.5802(a)(1), 5881(15), 5882(a), 5886(c),(n); Title I, 20 U.S.C. 6301(b)(3), 6312(b)(4), 6315(b)(3)(1); 20 U.S.C. 1412(a)(16), 34 C.F.R. 300.137(a)(2); State education reform statutes.

[293].20 U.S.C.1412(a)(16), (17); 34 C.F.R. 300.137(a)(2), (b), 34 C.F.R.300.138; 34 C.F.R. 104.4(b)(1), 104.333(b)(1)(i); 28 C.F.R. 35.130(b)(1).

students even with specialized instruction, related services, supplementary aids and services, individual accommodations or program modifications. Nevertheless, for a system to be inclusive of all students, it must adopt standards for all students, such as "habits of the mind" (e.g., persistence, attentiveness)[294] or independent living skills which subsume the widest range of abilities. Standards that address a wide range of ability, *as all other standards*, presumably can and should be broken down into components so that it is possible to determine whether students, including, in this case, those with severe cognitive disabilities can demonstrate whether they are making meaningful progress. Also, including these students in field tests incorporating a broad range of standards reflecting a wide spectrum of learning is one way that States and school districts can identify and consider the educational needs of these students in the development of standards that embrace all students and reflect desired outcomes.[295]

Students with disabilities must be provided the curriculum and instruction necessary to allow them to make progress toward meeting the standards set for all students.[296] Many children with severe disabilities, including cognitive disabilities, are able to participate in at least portions of the general curriculum, when specialized instruction and related services and supplementary aids and services are provided, as needed.[297] To the extent that their curricula and instruction have been modified by their respective IEP teams, they will need to be aligned with those standards (and components thereof) that encompass their supplemental educational needs, *as well as* with the content and performance standards (or components thereof) for all students, also modified and adapted as necessary and appropriate by their respective IEP teams.[298]

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[294]. Sizer, T. (1992), Horace's School: Redesigning the American High School, Boston: Houghton Mifflin: All students need to learn different types of skills, including habits of the mind (such as inquisitiveness, diligence, tolerance, collaboration, and critical thinking), content area knowledge (science, social studies, language arts, the arts, etc.), and basic academic skills such as reading, writing and mathematics.

[295]. Because virtually all States have by this time adopted standards and few, if any, have considered appropriate educational goals for students with the most severe cognitive disabilities, it may be necessary for States to supplement their standards by adopting a set of standards that incorporate the widest range of ability.

[296]. 20 U.S.C. 1412(a)(5)(A), 1414(c)(iv), (d)(1)(A)(ii)(I),(II), 34 C.F.R.300.347(a)(2), (3), (7), 300.552(2); 34 C.F.R. 104.4(b)(4), 104.33(a)(b)(1), 104.34(a); 28 C.F.R. 35.130(b)(1)(ii)-(iv), (b)(2), 35.130(d); 28 U.S.C. 35.130(b)(3).

[297].20 U.S.C. 1414(d)(3),(A),(B)(iv), (v), (C), (4), 34 C.F.R. 300.346(a) - (c),(d)(2).

[298]. See, Title I, 20 U.S.C. 6314(b)(1)(B), (H), 6315(c)(1)(A), (B), (D), 6315(c)(2)(B); Goals 2000, 20 U.S.C. 5802(a)(1), 5886(c)(1)(C), 6065(b); 20 U.S.C. 1401(8) (B), (C), 1412(a)(2)[definition of FAPE]; 20 U.S.C. 1414(d) [participation in the general curriculum]; 20 U.S.C. 1412(a)(5)(A); 34 C.F.R. 104.34(a); 28 C.F.R. 35.130(b)(2), 35.130(d) [participation in the regular education program and setting]; and the right not to be discriminated against under section 504 and the ADA [34 C.F.R. 104.33(a)(b)(1), 34 C.F.R. 104.4(b)(4); 28 U.S.C. 35.130(b)(1)(ii)-(iv), 35.130(b)(3)].

Because all students with disabilities have a right to participate in State and school district assessments as well as accountability systems,[299] these assessments must include all students, regardless of the nature or severity of their disability. The use of accommodations and modifications, as necessary and as determined by their IEP teams, ensures that all students with disabilities have an equitable opportunity to learn and to demonstrate what they know and are able to do.[300] Indeed, most students with disabilities can participate in these large scale assessments, in whole or in part, if provided accommodations or other test modifications.

Sometimes accommodations are not enough for some students with disabilities to participate in State or district-wide assessments. Particularly, if accommodations are interpreted *to preclude modifying the content of an assessment*, students who could demonstrate progress toward meeting the standards established for all, *if assessed differently*, must be provided that opportunity. These students might be assessed using a performance assessment that measures progress toward proficiencies in the same standards but in a different way. For example, a student who possesses the ability but cannot demonstrate his or her actual level of proficiency or mastery of particular standards by using the written standardized test instrument (even with accommodations or modifications), but who could do so by building a model or using a computer program, must arguably be provided such an alternative (alternate) assessment that measures the *same content standards* being measured by the standardized assessment.

On the other hand, an alternate assessment measuring *different content* may need to be developed for the limited population of students with such severe cognitive disabilities that they are unable[301] to demonstrate *any* measurable progress toward meeting even the broadest most basic standards, or parts thereof, using a standardized assessment or an alternative (performance) assessment designed to measure the same content differently. Arguably, if States considered and addressed the educational needs of all students, including those with severe cognitive disabilities, when establishing standards for all children, there should be very few instances when it would be necessary to use an alternate assessment that measures *different* content. Rather, these students would be administered the assessment, with such accommodations as needed, to determine their progress against the most basic components of standards established for all - i.e., a set of very broad standards that encompass the full range of abilities that have been broken down into components or benchmarks of learning.

Inclusion of students with disabilities in assessments can provide useful information about the system and the individual. The results of State and district wide

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[299]. 29 U.S.C. 794, 34 C.F.R. 104.4(b)(1)(i)-(iii), 104.4(b)(2); 28 C.F.R. 35.130(d); 20 U.S.C. 1412(a)(17), 34 C.F.R. 300.138.

[300]. 20 U.S.C. 1414(d)(1)(A), 34 C.F.R. 300.347(a)(5), (7)..

[301]. Such determination would have to be made in a valid, reliable manner consistent with testing principles.

assessments can serve as indicators that the curriculum, including any modified curriculum, is aligned with the full range of applicable standards, and that the curriculum is being implemented through effective instruction.[302] Individually, assessment results may also be used to provide feedback to teachers and parents about an individual child's educational strengths and needs, helping to shape instruction through review and revision of the student's IEPs.[303] Significantly, when such assessments are used in this way to improve instruction and learning and as a means of holding systems accountable, e.g., under Title I, Parts B and D of IDEA, and state education reform statutes, they *cannot* be used to impose 'high stakes' consequences (e.g., promotion or graduation) on students. To the contrary, poor performance is evidence that students have not received effective instruction and have not been provided adequate opportunity to learn. Nowhere is the evidence likely to be more clear than in the case of students with disabilities, especially students with cognitive disabilities, who have received inadequate and ineffective programming and instruction, and been inappropriately denied access to the body of knowledge contained in the general curriculum taught non-disabled children.[304]

Ultimately, students, parents, and advocates must be vigilant if States and school districts are going to be held accountable for improving educational outcomes for all students with disabilities. Students with disabilities will benefit from standards based education reform only when all students participate in a challenging general curriculum; educators, service providers and parents share high expectations that they can attain, in whole or in part, standards established for all other students; their teachers and providers rely on 'state of the art' knowledge and instructional strategies; and educators, parents, students and their advocates effectively use information gathered from the assessment process to inform student progress and systems' improvement.

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[302]. See Goals 2000, 20 U.S.C. 5886(c)(1)(B)(i), 6065(a), (b); Title I, 20 U.S.C. 6314(b)(1), 6311(b)(3), 6317(c)(1), 6315(b)(1)(B), (c)(2)(B); 20 U.S.C. 1412(a)(16)(B) - (D), 1412(a)(17)(B); 34 C.F.R.300.137, 300.138(a), 300.139.

[303]. See Title I, 20 U.S.C. 6311(B)(3)(), (I), 6314(b)(1)(H); 20 U.S.C.1412(a)(17)(B), 300.137(b), 300.139; also IEP review and reevaluations at 20 U.S.C. 1414(d)(4)(A), 34 C.F.R.300.343(c), 300.347(a)(7). 300.350; 34 C.F.R.104.4(b).

[304]. 20 U.S.C. 1400(c)(4).

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

34 C.F.R Part 104,

Subpart D

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

34 C.F.R Part 104, Subpart D

Regulations Concerning Education Under Reg. Sec. 504 of the Rehabilitation Act Selected Portions of 34 C.F.R. 104

Subpart D -- Preschool, Elementary, and Secondary Education

Reg. Sec. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. Sec. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Reg. Sec. 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education.

(1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that

(i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and

(ii) are based upon adherence to procedures that satisfy the requirements of Regs. Secs. 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education.

(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Reg. Sec. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the

recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Reg. Sec. 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Reg. Sec. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. Sec. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Reg. Sec. 104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer,

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall

(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,

(2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Reg. Sec. 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the
Handicapped Act is one means of meeting this requirement.

Reg. Sec. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to

need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Reg. Sec. 104.37 Nonacademic services.

(a) General.

(1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Reg. Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Reg. Sec. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Reg. Sec. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Reg. Sec. 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Sections 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Sections 104.34, 104.37, and 104.38.

Family Educational Rights and Privacy 34 C.F.R. Part 99

Family Educational Rights and Privacy 34 C.F.R. Part 99

Subpart A -- General

Reg. 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in <185>99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education if --

(1) The educational institution provides educational services or instruction, or both, to student; or

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(Authority: 20 U.S.C. 1230, 1230g, 3487, 3507)

[Amended 65 Fed. Reg. 41851 (July 6, 2000).]

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non – monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section (1) are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).
(Authority: 20 U.S.C. 1232g)

[Amended by 61 Fed. Reg. 59295 (Nov. 21, 1996).]

Reg. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 C.F.R. 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under [IDEA].)

[Amended by 61 Fed. Reg. 59295 (Nov. 21, 1996).]

Reg. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Education Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to --

(a) attendance in person or by correspondence; and

(b) the period during which a person is working under a work – study program.

(Authority: 20 U.S.C. 1232g)

"Dates of attendance"

(a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

[Added 65 Fed. Reg. 41852 (July 6, 2000).]

"Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or

part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

[Amended 65 Fed. Reg. 41852-3 (July 6, 2000).]

"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Reg.99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records"

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Reg. 99.8.
[As amended in 60 Fed. Reg. 3469 (Jan. 17, 1995) and 65 Fed. Reg. 41852 (July 6, 2000).]

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d)

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable:or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

[Amended in 61 Fed. Reg. 59295 (Nov. 21, 1996).]

Reg. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

Reg. 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.

(Authority: 20 U.S.C. 1232g(d)

[53 Fed. Reg. 11943 (April 11, 1988); as amended 58 Fed. Reg. 3188 (Jan. 7, 1993) and 65 Fed. Reg. 41853 (July 6, 2000)]

Reg. 99.6 [Removed in 61 Fed. Reg. 59295 (Nov. 21, 1996).]

Reg. 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to-

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and Reg. 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under Regs. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under Reg. 99.20;

(iii) If the educational agency or institution has a policy of disclosing education records under Reg. 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e) and (f)).

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(e) and (f))

[53 Fed. Reg. 11943, Apr. 11, 1988; 53 Fed. Reg. 19368, May 27, 1988; 61 Fed. Reg. 59295-6 (Nov. 21, 1996).]

Reg. 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non – commissioned security guards, that is officially authorized or designated by that agency or institution to –

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are –

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean --

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of Sec. 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

[Amended in 60 Fed. Reg. 3463 (January 17, 1995).]

Subpart B -- What are the Rights of Inspection and Review of Education Records?

Reg. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Reg. 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records.
This provision applies to --

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to Subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall --

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an educational agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Reg. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.
(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

[Amended in 61 Fed. Reg. 5929x- (Nov. 21, 1996).]

Reg. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority:20 U.S.C. 1232g(a)(1)

Reg. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review these letters and statements; and (ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition. (c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:
(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A), (B), (C) and (D).

[Amended by 61 Fed. Reg. 59296 (Nov. 21, 1996).]

Subpart C -- What are the Procedures for Amending Education Records?

Reg. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Reg. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 Fed. Reg. 11943, Apr. 11, 1988; 53 Fed. Reg. 19368, May 27, 1988; 61 Fed. Reg. 59296 (Nov. 21, 1996).]

Reg. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

[Amended by 61 Fed. Reg. 59296 (Nov. 21, 1996).]

Reg. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Reg. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing. (d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Reg. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals
of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232h(a)(2))

Subpart D -- May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

Reg. 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in Reg. 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.
(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

[53 Fed. Reg. 11943, Apr. 11, 1988, as amended at 58 Fed. Reg. 3189, Jan. 7, 1993]

Reg. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Reg. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Reg. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Reg. 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

[Amended 65 Fed. Reg. 41853 (July 6, 2000).]

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid. (ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically --

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Reg. 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in Reg. 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

[Amended 65 Fed. Reg. 41853 (July 6, 2000).]

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with –

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court

order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

[Amended 65 Fed. Reg. 41853 (July 6, 2000).]

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Reg. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in Reg. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in Sec. 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

[Amended 65 Fed. Reg. 41853 (July 6, 2000).]

(14)(i) The disclosure, subject to the requirements in Reg. 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that–

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

[Added 65 Fed. Reg. 41853 (July 6, 2000).]

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if--

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

[Added 65 Fed. Reg. 41853 (July 6, 2000).]

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))

[53 Fed. Reg. 11943, Apr. 11, 1988; 53 Fed. Reg. 19368, May 27, 1988, as amended at 58 Fed. Reg. 3189, Jan. 7, 1993, 61 Fed. Reg. 59296 (Nov. 21, 1996) and 65 Fed. Reg. 41853 (July 6, 2000).]

Reg. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Reg. 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Reg. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:
(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Reg. 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under Reg. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

[Amended in 61 Fed. Reg. 69297 (Nov. 21, 1996).]

(Approved by the Office of Management and Budget under control number 1880-0508)

Reg. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of Reg. 99.31; and
(2) The educational agency or institution has complied with the requirements of Reg. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under Reg. 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under Reg. 99.31(a)(9), to disclosures of directory information under Sec. 99.31(a)(11), to disclosures made to a parent or student under Reg. 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under Reg. 99.31(a)(14), or to disclosures made to parents under Reg. 99.31(a)(15).

[Amended in 65 Fed. Reg. 41853 (June 6, 2000).]

(d) Except for disclosures under Reg. 99.31(a)(9), (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of Reg. 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

[Amended in 61 Fed. Reg. 69297 (Nov. 21, 1996).]

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Reg. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Reg. 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under Reg. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[Amended in 61 Fed. Reg. 69297 (Nov. 21, 1996).]

Reg. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Reg. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under Reg. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Reg. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from --

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I) and (h))

[53 Fed. Reg. 11943, Apr. 11, 1988; 53 Fed. Reg. 19368, May 27, 1988; and 61 Fed. Reg. 59297 (Nov. 21, 1996).]

Reg. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.
(Authority: 20 U.S.C. 1232g(a)(5)(A) and (B))

Reg. 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Reg. 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

[As added by 61 Fed. Reg. 59297 (Nov. 21, 1996).]

Reg. 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

"Alleged perpetrator of a crime of violence" is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

Arson

Assault offenses

Burglary

Criminal homicide--manslaughter by negligence

Criminal homicide--murder and nonnegligent manslaughter

Destruction/damage/vandalism of property

Kidnapping/abduction

Robbery
Forcible sex offenses.

"Alleged perpetrator of a nonforcible sex offense" means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

"Final results" means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the student.

"Sanction imposed" means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

"Violation committed" means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

(Authority: 20 U.S.C. 1232g(b)(6))

[Added 65 Fed. Reg. 41853-4 (July 6, 2000).]

Subpart E – What are the Enforcement Procedures?

Reg. 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

[53 Fed. Reg. 11943, Apr. 11, 1988, as amended at 58 Fed. Reg. 3189, Jan. 7, 1993)

Reg. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Reg. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

Reg. 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

[58 Fed. Reg. 3189, Jan. 7, 1993; amended by 61 Fed. Reg. 59297 (Nov. 21, 1996) and by 65 Fed. Reg. 41854 (July 6, 2000).]

Reg. 99.64 What is the complaint procedure?

(a) A complaint filed under Reg. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office may extend the time limit in this section for good cause shown.

(Authority: 20 U.S.C. 1232g(f))

[53 Fed. Reg. 11943 (Apr. 11, 1988); amended at 58 Fed. Reg. 3189 (Jan. 7, 1993) and 65 Fed. Reg. 41854 (July 6, 2000).]

Reg. 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under section 99.64(b). The notice to the educational agency or institution --

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of section 99.64.

(Authority: 20 U.S.C. 1232g(g))

[58 Fed. Reg. 3189, Jan. 7, 1993]

Reg. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Reg. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under Reg. 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act –

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease and desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under Reg. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 C.F.R. Part 78 contains the regulations of the Education Appeal Board)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[53 Fed. Reg. 11943, Apr. 11, 1988; 53 Fed. Reg. 19368, May 27, 1988, as amended at 58 Fed. Reg. 3189, Jan. 7, 1993]

Appendix A To Part 99—
Crimes of Violence Definitions

[As published in 65 Fed. Reg. 41854-5 (July 6, 2000).]

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Assault Offenses

An unlawful attack by one person upon another.

Note: By definition there can be no ``attempted'' assaults, only ``completed'' assaults.

(a) Aggravated Assault. An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) Simple Assault. An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) Intimidation. To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.

Note: This offense includes stalking.

Burglary

The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide--Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide--Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction

The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

Note: Kidnapping/Abduction includes hostage taking.

Robbery

The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

Note: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.

Sex Offenses, Forcible

Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) Forcible Rape (Except ``Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) Forcible Sodomy. Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) Sexual Assault With An Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will

where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: An ``object'' or ``instrument'' is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

(d) Forcible Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Note: Forcible Fondling includes ``Indecent Liberties'' and ``Child Molesting.''

Nonforcible Sex Offenses (Except ``Prostitution Offenses'')

Unlawful, nonforcible sexual intercourse.

(a) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

[Authority: 20 U.S.C. 1232g(b)(6) and 18 U.S.C. 16)

Model Notifications

[As published in 61 Fed. Reg. 59291, 59297-59298 (November 21, 1996)]

(Note: These model notifications were not codified in the Code of Federal Regulations.)

Model Notification of Rights Under FERPA for Elementary and Secondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask [this school district] to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement personnel); a person serving on the School

Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[OPTIONAL] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

[Note: In addition, a school may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the University receives a request for access.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

(2) The right to request the amendment of student's education records that the student believes are inaccurate or misleading.

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company within whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[OPTIONAL] Upon request, the University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

[Note: In addition, an institution may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Parent Training and Information Centers and Community Groups in the United States

Parent Training and Information Centers and Community Groups in the United States

Parent centers in each state provide training and information to parents of infants, toddlers, school-aged children, and young adults with disabilities and the professionals who work with their families. This assistance helps parents participate more effectively with professionals in meeting the educational needs of children and youth with disabilities. To reach the parent center in your state, you can contact the Technical Assistance Alliance for Parent Centers (the Alliance), which coordinates the delivery of technical assistance to the Parent Training and Information Centers and the Community Parent Resource Centers through four regional centers located in California, New Hampshire, Texas, and Ohio.

Alliance Coordinating Office:
PACER Center
8161 Normandale Blvd.
Minneapolis, MN 55437-1044
(952) 838-9000 voice
(952) 838-0190 TTY
(952) 838-0199 fax
1-888-248-0822 (toll-free nationally)
E-mail: alliance@taalliance.org
Web site: www.taalliance.org
Paula F. Goldberg, Project Co-Director
Sharman Davis Barrett, Project Co-Director
Sue Folger, Project Co-Director
Dao Xiong, Multicultural Advisor
Jesus Villaseñor, Multicultural Advisor

Northeast Regional Center
Parent Information Center
P.O. Box 2405
Concord, NH 03302-2405
603-224-7005 voice
603-224-4379 fax
E-mail: picnh@aol.com
Judith Raskin, Regional Director
Mary Trinkley, Technical Assistance Coordinator
Lillye Ramos Spooner, Multicultural TA Coordinator
CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, Puerto Rico, RI, US VI, VT

Midwest Regional Center
Ohio Coalition for the Education of Children with Disabilities (OCECD)
Bank One Building
165 West Center Street, Suite 302
Marion, OH 43302-3741
(740) 382-5452 voice
(740) 383-6421 fax
E-mail: ocecd@gte.net
Margaret Burley, Regional Co-Director
Lee Ann Derugen, Regional Co-Director
Dena Hook, Technical Assistance Coordinator
CO, IL, IA, IN, KS, KY, MI, MN, MO, NE, ND, OH, SD, WI

South Regional Center
Partners Resource Network, Inc.
1090 Longfellow Drive, Suite B
Beaumont, TX 77706-4819
(409) 898-4684 voice
(409) 898-4869 fax
E-mail: txprn@pnx.com
Janice S. Meyer, Regional Director
Beverly Elrod-Wilson, Technical Assistance Coordinator
J. Linda Juarez, Multicultural TA Coordinator
AL, AR, FL, GA, LA, MS, NC, OK, SC, TN, TX, VA, WV

West Regional Center
Matrix Parent Network and Resource Center
94 Galli Drive, Suite C
Novato, CA 94949
(415) 884-3535
(415) 884-3555 fax
E-mail: alliance@matrixparents.org
Nora Thompson, Technical Assistance Coordinator
Patricia Valdez, Multicultural TA Coordinator
AK, AZ, Department of Defense Dependent Schools (DODDS), CA, HI, ID, MT, NV, NM,
OR, Pacific Jurisdiction, UT, WA, WY

This list of federally funded Parent Centers was generated by the Alliance Coordinating Office at the PACER Center. If there are any corrections please notify the Alliance Office.

Federally Funded Parent Projects

Alabama
Special Education Action Committee Inc.
Carol Blades, Director
P.O. Box 161274
Mobile, AL 36616-2274
334-478-1208 Voice & TDD
334-473-7877 FAX
1-800-222-7322 AL only
seacofmobile@zebra.net
home.hiwaay.net/~seachsv/

Alaska
PARENTS, Inc.
Faye Nieto
4743 E. Northern Lights Blvd.
Anchorage, AK 99508
907-337-7678 Voice
907-337-7629 TDD
907-337-7671 FAX
1-800-478-7678 in AK
parents@parentsinc.org
www.parentsinc.org

American Samoa
American Samoa PAVE
Fa' Anati Penitusi
P.O. Box 6844
Pago Pago, AS 96799
011-684-699-6946
011-684-699-6952 FAX
SAMPAVE@samoatelco.com
www.taalliance.org/ptis/amsamoa/

Arizona
Pilot Parents of Southern Arizona
Lynn Kallis
2600 North Wyatt Drive
Tucson, AZ 85712
520-324-3150
520-324-3152
ppsa@pilotparents.org
www.pilotparents.org
Southern AZ

Arizona
RAISING Special Kids
Joyce Millard-Hoie
4750 N. Black Canyon Hwy, Suite 101
Phoenix, AZ 85017-3621
602-242-4366 Voice & TDD
602-242-4306 FAX
1-800-237-3007 in AZ
Central and Northern AZ
raisingspecialk1@qwest.net

Arkansas
Arkansas Disability Coalition
Wanda Stovall
1123 University Ave., Suite 225
Little Rock, AR 72204-1605
501-614-7020 Voice & TDD
501-614-9082 FAX
1-800-223-1330 AR only
adc@alltel.net
www.adcpti.org
Statewide
With FOCUS AR

Arkansas
FOCUS, Inc.
Ramona Hodges
305 West Jefferson Ave.
Jonesboro, AR 72401
870-935-2750 Voice
870-931-3755 FAX
888-247-3755
focusinc@ipa.net
www.grnco.net/~norre/
With Arkansas Disability Coalition AR

California
DREDF
Diane Lipton
2212 Sixth Street
Berkeley, CA 94710
510-644-2555 (TDD available)
510-841-8645 FAX
1-800-466-4232
dredf@dredf.org
www.dredf.org
Northern California
With Parents Helping Parents, Santa Clara

California
Exceptional Family Support, Education and Advocacy Center
Debbie Rowell
6402 Skyway
Paradise, CA 95969
530-876-8321
530-876-0346
1-888-263-1311
sea@sunset.net
www.sea-center.org

California
Exceptional Parents Unlimited
Leslie Lee
4120 N. First St.
Fresno, CA 93726
559-229-2000
559-229-2956 FAX
epu1@cybergate.com
www.exceptionalparents.org
Central California

California (CPRC)
Loving Your Disabled Child
Theresa Cooper
4528 Crenshaw Boulevard
Los Angeles, CA 90043
323-299-2925
323-299-4373 FAX
lydc@pacbell.net
www.lydc.org
Most of LA County

California
Matrix
Nora Thompson
94 Galli Drive, Suite C
Novato, CA 94949
415-884-3535
415-884-3555 FAX
1-800-578-2592
alliance@matrixparents.org
www.matrixparents.org
Northern California
With Parents Helping parents, Santa Clara

California
Parents Helping Parents of San Francisco
Lois Jones
594 Monterey Blvd.
San Francisco, CA 94127-2416
415-841-8820
415-841-8824 FAX
sfphp@earthlink.com
Nine counties in the San Francisco Bay area

California
Parents Helping Parents of Santa Clara
Mary Ellen Peterson
3041 Olcott St.
Santa Clara, CA 95054-3222
408-727-5775 Voice / 408-727-7655 TDD
408-727-0182 FAX
info@php.com
www.php.com
Northern California
With Matrix and DREDF

California (CPRC)
Parents of Watts
Alice Harris
10828 Lou Dillon Ave
Los Angeles, CA 90059
323-566-7556
323-569-3982 FAX
egertonf@hotmail.com
With Loving Your Disabled Child

California
Support for Families of Children with Disabilities
Juno Duenas
2601 Mission #710
San Francisco, CA 94110-3111
415-282-7494
415-282-1226 FAX
sfcdmiss@aol.com
San Francisco

California
TASK
Joan Tellefsen / Martha Anchondo
100 West Cerritos Ave.
Anaheim, CA 92805
714-533-8275
714-533-2533 FAX
taskca@yahoo.com
Southern California

California
TASK, San Diego
Joan Tellefsen
3750 Convoy St., Suite 303
San Diego, CA 92111-3741
858-874-2386
858-874-2375 FAX
tasksd1@yahoo.com
City of San Diego and Imperial counties

California (CPRC)
Vietnamese Parents of Disabled Children Assoc., Inc. (VPDCA)
My-Lihn Duvan, President
7526 Syracuse Ave
Stanton, CA 90680
310-370-6704
310-542-0522 FAX
luyenchu@aol.com
With Loving Your Disabled Child

Colorado
PEAK Parent Center, Inc.
Barbara Buswell
611 North Weber, Suite 200
Colorado Springs, CO 80903
719-531-9400 voice / 719-531-9403 TDD
719-531-9452 FAX
1-800-284-0251
info@peakparent.org
www.peakparent.org

Connecticut
Connecticut Parent Advocacy Center
Nancy Prescott
338 Main Street
Niantic, CT. 06357
860-739-3089 Voice & TDD
860-739-7460 FAX (Call first to dedicate line)
1-800-445-2722 in CT
cpac@cpacinc.org
members.aol.com/cpacinc/cpac.htm

Delaware
Parent Information Center of Delaware (PIC/DE)
Marie-Anne Aghazadian
700 Barksdale Road, Suite 16
Newark, DE 19711
302-366-0152 voice / 302-366-0178 (TDD)
302-366-0276 FAX
1-888-547-4412
picofdel@picofdel.org
www.picofdel.org

District of Columbia
Advocates for Justice and Education
Bethann West
2041 Martin Luther King Ave., SE, Suite 301
Washington, DC 20020
202-678-8060
202-678-8062 FAX
1-888-327-8060
justice1@bellatlantic.net
www.aje.qpg.com/
District of Columbia

Florida
Family Network on Disabilities
Jan LaBelle
2735 Whitney Road
Clearwater, FL 33760-1610
727-523-1130
727-523-8687 FAX
1-800-825-5736 FL only
fnd@fndfl.org
fndfl.org

Florida (CPRC)
Parent to Parent of Miami, Inc.
Isabel Garcia
c/o Sunrise Community
9040 Sunset Drive, Suite G
Miami, FL 33173
305-271-9797
305-271-6628 FAX
PtoP1086@aol.com
Miami Dade and Monroe Counties

Georgia
Parents Educating Parents and Professionals for All Children (PEPPAC)
LaVerne Bomar
6613 East Church Street, Suite 100
Douglasville, GA 30134
770-577-7771
770-577-7774 FAX
peppac@bellsouth.net
www.peppac.org

Hawaii
AWARE
Jennifer Schember-Lang,
200 N. Vineyard Blvd., Suite 310
Honolulu, HI 96817
808-536-9684 Voice / 808-536-2280 Voice & TTY
808-537-6780 FAX
1-800-533-9684
ldah@gte.net

Hawaii
Palau Parent Network
Erma Ngwal
c/o Dottie Kelly
Center on Disability Studies, University of Hawaii
1833 Kala Kaua Avenue, #609
Honolulu, HI 96815
808-945-1432
808-945-1440 FAX
dotty@hawaii.edu; patric@palaunet.com

Idaho
Idaho Parents Unlimited, Inc.
Cheryl Fisher
4696 Overland Road, Suite 568
Boise, ID 83705
208-342-5884 Voice & TDD
208-342-1408 FAX
1-800-242-4785
ipul@rmci.net
home.rmci.net/ipul

Idaho
Native American Parent Training and Information Center
Chris Curry & Susan Banks
129 East Third
Moscow, ID 83843
208-885-3500
208-885-3628 FAX
famtog@moscow.com
Nation-wide resource for Native American families, tribes, and communities as well as parent centers and others needing information on this subject.

Illinois
Designs for Change
Donald Moore
29 East Madison, Suite 95
Chicago, IL 60602
312-236-7252 voice / 312-857-1013 TDD
312-857-9299 FAX
markse@designsforchange.org
www.dfc1.org

Illinois
Family Resource Center on Disabilities
Charlotte Des Jardins
20 E. Jackson Blvd., Room 300
Chicago, IL 60604
312-939-3513 voice / 312-939-3519 TTY & TDY
312-939-7297 FAX
1-800-952-4199 IL only
frcdptiil@ameritech.net
www.ameritech.net/users/frcdptiil/index.html

Illinois
Family T.I.E.S. Network
Carol Saines
830 South Spring
Springfield, IL 62704
217-544-5809
217-544-6018 FAX
1-800-865-7842
ftiesn@aol.com
www.taalliance.org/ptis/fties/

Illinois
National Center for Latinos with Disabilities
Everado Franco
1915-17 South Blue Island Ave.
Chicago, IL 60608
312-666-3393 voice / 312-666-1788 TTY
312-666-1787 FAX
1-800-532-3393
ncld@ncld.com
homepage.interaccess.com/~ncld/

Indiana
IN*SOURCE
Richard Burden
809 N. Michigan St.
South Bend, IN 46601-1036
219-234-7101
219-239-7275 TDD
219-234-7279 FAX
1-800-332-4433 in IN
insourc1@aol.com
www.insource.org

Iowa
Access for Special Kids (ASK)
Jule Reynolds
321 E. 6th St
Des Moines, IA 50309
515-243-1713
515-243-1902 FAX
1-800-450-8667
ptiiowa@aol.com
www.taalliance.org/ptis/ia/

Kansas (CPRC)
Families ACT
Nina Lomely-Baker
555 N. Woodlawn
Wichita, KS 67203
316-685-1821
316-685-0768 FAX
nina@mhasck.org
www.mhasck.org
Sedgwick County and Outlying area

Kansas
Families Together, Inc.
Connie Zienkewicz
3340 W Douglas, Ste 102
Wichita, KS 67203
316-945-7747
316-945-7795 FAX
1-888-815-6364
www.familiestogetherinc.com
www.kansas.net/~family/

Kentucky
Special Parent Involvement Network (SPIN)
Paulette Logsdon
10301 B Deering Road
Louisville, KY 40272
502-937-6894
502-937-6464 FAX
1-800-525-7746
spininc@aol.com

Kentucky
FIND of Louisville
Robin Porter
1146 South Third Street
Louisville, KY 40203
502-584-1239
502-584-1261 FAX
training@council-crc.org
www.council-crc.org

Louisiana (CPRC)
Pyramid Parent Training Program
Ursula Markey
4101 Fontainbleau Dr
New Orleans, LA 70125
504-827-0610
504-827-2999 FAX
dmarkey404@aol.com

Louisiana
Project PROMPT
Leah Knight
4323 Division Street, Suite 110
Metairie, LA 70002-3179
504-888-9111
504-888-0246 FAX
1-800-766-7736
fhfgno@ix.netcom.com
www.projectprompt.com

Maine
Maine Parent Federation
Janice LaChance
P.O. Box 2067
Augusta, ME 04338-2067
207-582-2504
207-582-3638 FAX
1-800-870-7746
jlachance@mpf.org
www.mpf.org

Maryland
Parents Place of Maryland, Inc.
Josie Thomas
7484 Candlewood Rd Suite S
Hanover, MD 21076-1306
410-859-5300 Voice & TDD
410-859-5301 FAX
info@ppmd.org
www.ppmd.org

Massachusetts
Federation for Children with Special Needs
Richard Robison
1135 Tremont Street, Suite 420
Boston, MA 02120-2140
617-236-7210 (Voice and TTY)
617-572-2094 FAX
1-800-331-0688 in MA
fcsninfo@fcsn.org
www.fcsn.org/

Massechusetts (CPRC)
IPEST
Carol Kennedy
PO Box 4081
Vineyard Haven, MA 02568
508-696-5486
508-696-5497 - fax
ckennedy@fastdial.net

Massachusetts (CPRC)
Urban / PRIDE / IPEST
Charlotte R. Spinkston
1472 Tremont
Roxbury Crossing, MA 02120
617-445-3191
617-445-6309 FAX
1-800-331-0688 in MA
cspinkstion@compassinc.com

Michigan
CAUSE
Deborah Canja Iso
3303 W. Saginaw, Suite F-1
Lansing, MI 48917-2303
517-886-9167 Voice & TDD & TDY
517-886-9775 FAX
1-800-221-9105 in MI
info@causeonline.org
www.causeonline.org

Michigan
"Parents are Experts" Parents Training Parents
Pat Dwelle
23077 Greenfield Road, Suite 205
Southfield, MI 48075-3745
248-557-5070 Voice & TDD
248-557-4456 FAX
1-800-827-4843
ucp@ameritech.net
www.taalliance.org/ptis/mi-parents/
Wayne County

Minnesota
PACER Center, Inc.
Paula Goldberg/Virginia Richardson
8161 Normandale Blvd.
Minneapolis, MN 55437-1044
952-838-9000 (Voice); 952-838-0190 (TTY)
952-838-0199 FAX
1-800-537-2237 in MN
pacer@pacer.org
www.pacer.org

Mississippi
Parent Partners
7 Lakeland Circle Suite 600
Jackson, MS 39216
(601) 982-1988
(601) 982-5792 FAX
1-800-366-5707 in MS
arcpti@parentpartners.org - Parent Partners General box
tburton@parentpartner.org - Terry Burton, Director
gretchen@parentpartners.org - Gretchen Kleeb, Director of Training
aretha@parentpartners.org - Aretha Lee, Resource Specialist
sharlet@parentpartners.org - Luticia Sharlet Scott, Training Specialist

linda@arcms.org - Linda Bond, Executive Director
ptiofms@misnet.com
www.parentpartners.org

Mississippi (CPRC)
Project Empower
Agnes Johnson
136 South Poplar Ave
Greenville, MS 38701
601-332-4852
601-332-1622 FAX
1-800-337-4852
empower@tecinfo.com

Missouri
Missouri Parents Act (MPACT)
Janet Jacoby, Executive Director
1 W. Armour Blvd. Suite 302
Kansas City, MO 64111
1-816-531-7070
1-816-531-4777 fax
1-800-743-7634
ptijcj@aol.com
www.crn.org/mpact/

Montana
Parents Let's Unite for Kids
Dennis Moore
516 N. 32nd Street
Billings, MT 59101
406-255-0540
406-255-0523 FAX
1-800-222-7585 in MT
plukinfo@pluk.org
www.pluk.org

Nebraska
Nebraska Parents Center
Glenda Davis
1941 South 42nd St., #122
Omaha, NE 68105-2942
402-346-0525 Voice & TDD
402-346-5253 FAX
1-800-284-8520
gdavis@neparentcenter.org
www.neparentcenter.org

Nevada
Nevada Parents Encouraging Parents (PEP)
Karen Taycher
2810 W. Charleston Blvd., Suite G-68
Quall Park IV
Las Vegas, NV 89102
702-388-8899
702-388-2966 FAX
1-800-216-5188
nvpep@vegas.infi.net
www.nvpep.org

New Hampshire
Parent Information Center
Judith Raskin
P.O. Box 2405
Concord, NH 03302-2405
603-224-7005 (Voice & TDD)
603-224-4379 FAX
1-800-232-0986 in NH
picnh@aol.com
www.parentinformationcenter.org

New Jersey
Statewide Parent Advocacy Network (SPAN)
Diana MTK Autin
35 Halsey Street, 4th Floor
Newark, NJ 07102
973-642-8100
973-642-8080 FAX
1-800-654-SPAN
span@spannj.org
www.spannj.org

New Mexico
Parents Reaching Out, Project ADOBE
Larry Fuller
1000-A Main St. NW
Los Lunas, NM 87031
505-865-3700 Voice & TDD
505-865-3737 FAX
1-800-524-5176 in NM
nmproth@aol.com
www.parentsreachingout.org

New Mexico (CPRC)
EPICS Project
Martha Gorospe - Charlie
412 Camino Don Thomas, P.O. Box 788
Bernalillo, NM 87004-0788
505-867-3396
505-867-3398 FAX
1-800-524-5176 in NM
epics@swcr.org

New York
The Advocacy Center
Cassandra Archie
277 Alexander St., Suite 500
Rochester, NY 14607
716-546-1700
716-546-7069 FAX
1-800-650-4967 (NY only)
advocacy@frontiernet.net
www.advocacycenter.com
Statewide except for NY city.

New York
Advocates for Children of NY
Ana Espada
151 West 50th Street, 5th Floor
New York, NY 10001
212-947-9779
212-947-9790 FAX
aespada@advocatesforchildren.org
www.advocatesforchildren.org
Five boroughs of New York City

New York
Resources for Children with Special Needs, Inc.
Karen Schlesinger, Director
200 Park Ave. South, Suite 816
New York, NY 10003
212-677-4650
212-254-4070 FAX
info@resourcesnyc.org
www.resourcesnyc.org
New York City (Bronx, Brooklyn, Manhattan, Queens, Staten Island)

New York
Sinergia/Metropolitan Parent Center
Donald Lash, Executive Director
15 West 65th St., 6th Floor
New York, NY 10023
212-496-1300
212-496-5608 FAX
dalsinergia@worldnet.att.net
www.sinergiany.org
New York City

New York (CPRC)
United We Stand
Lourdes Revera-Putz
312 South 3rd Street
Brooklyn, NY 11211
718-302-4313, ext. 562
718-302-4315 FAX
uwsofny@aol.com
www.taalliance.org/ptis/uws/

North Carolina
Exceptional Children's Assistance Center (ECAC), Inc.
Connie Hawkins
P.O. Box 16
Davidson, NC 28036
704-892-1321
704-892-5028 FAX
1-800-962-6817 NC only
ECAC1@aol.com
www.ecac-parentcenter.org/

North Dakota
ND Pathfinder Parent Training And Information Center
Kathryn Erickson
Arrowhead Shopping Center
1600 2nd Ave. SW, Suite 19
Minot, ND 58701-3459
701-837-7500 voice / 701-837-7501 TDD
701-837-7548 FAX
1-800-245-5840 ND only
ndpath01@minot.ndak.net
www.pathfinder.minot.com

Ohio
Child Advocacy Center
Cathy Heizman
1821 Summit Road, Suite 303
Cincinnati, OH 45237
513-821-2400
513-821-2442 FAX
CADCenter@aol.com
Southwestern Ohio, Northern Kentucky, Dearborn County, Indiana

Ohio
OCECD
Margaret Burley
Bank One Building
165 West Center St., Suite 302
Marion, OH 43302-3741
740-382-5452 Voice & TDD
740-383-6421 FAX
1-800-374-2806
ocecd@gte.net
www.taalliance.org/PTIs/regohio/

Oklahoma
Oklahoma Parents Center, Inc.
Sharon Bishop
4600 Southeast 29th Street, Suite 115
Del City, OK 73115-4224
405-619-0500
405-670-0776 FAX
1-877-553-IDEA
okparentctr@aol.com

Oregon
Oregon COPE Project
Anne Brown
999 Locust St. NE
Salem, OR 97303
503-581-8156 Voice & TDD
503-391-0429 FAX
1-888-505-COPE
orcope@open.org
www.open.org/~orcope

Pennsylvania (CPRC)
Hispanos Unidos para Niños Excepcionales
(Hispanics United for Exceptional Children)
Luz Hernandez
Buena Vista Plaza
166 W. Lehigh Ave., Suite 101
Philadelphia, PA 19133-3838
215-425-6203
215-425-6204 FAX
nuneinc@aol.com
City of Philadelphia, occasional service to surrounding counties

Pennsylvania
Parent Education Network
Louise Thieme
2107 Industrial Hwy
York, PA 17402-2223
717-600-0100 Voice & TTY
717-600-8101 FAX
1-800-522-5827 in PA
1-800-441-5028 (Spanish in PA)
pen@parentednet.org
www.parentednet.org

Pennsylvania (CPRC)
The Mentor Parent Program
Gail Walker
P.O. Box 47
Pittsfield, PA 16340
814-563-3470
814-563-3445 FAX
gwalker@westpa.net

Puerto Rico
APNI
Carmen Sellés deVilá
P.O. Box 21280
Ponce de Leon 724
San Juan, PR 00928-1301
787-763-4665
787-765-0345 FAX
1-800-981-8492
1-800-949-4232
apnipr@prtc.net
Island of Puerto Rico

Rhode Island
RI Parent Information Network
Cheryl Collins
175 Main Street
Pawtucket, RI 02860
401-727-4144 voice / 401-727-4151 TDD
401-727-4040 FAX
1-800-464-3399 in RI
collins@ripin.org
http://www.ripin.org/

South Carolina (CPRC)
Parent Training & Resource Center
Beverly McCarty
c/o Family Resource Center
135 Rutledge Ave., PO Box 250567
Charleston, SC 29425
843-876-1519
843-876-1518 FAX
mccartyb@musc.edu
Tri-county: Charleston, Berkeley, and Dorchester

South Carolina
PRO-PARENTS
Mary Eaddy
2712 Middleburg Drive, Suite 203
Columbia, SC 29204
803-779-3859 Voice
803-252-4513 FAX
1-800-759-4776 in SC
proparents@aol.com
community.columbiatoday.com/realcities/proparents

South Dakota
South Dakota Parent Connection
Bev Petersen
3701 West 49th St., Suite 200B
Sioux Falls, SD 57106
605-361-3171 Voice & TDD
605-361-2928 FAX
1-800-640-4553 in SD
bpete@sdparent.org
www.sdparent.org

Tennessee
Support and Training for Exceptional Parents, Inc. (STEP)
Nancy Diehl
424 E. Bernard Ave., Suite 3
Greeneville, TN 37745
423-639-0125 voice / 636-8217 TDD
423-636-8217 FAX
1-800-280-STEP in TN
tnstep@aol.com
www.tnstep.org

Texas (CPRC)
El Valle Community Parent Resource Center
Cynthia Caballero
530 South Texas Blvd, Suite J
Weslaco, TX 78596
956-969-3611
956-969-8761 FAX
1-800-680-0255 TX only
texasfiestaedu@acnet.net
www.tfepoder.org
Cameron, Willacy, & Starr Counties.

Texas (CPRC)
The Arc of Texas in the Rio Grande Valley
Parents Supporting Parents Network
Larry Zuniga
601 N Texas Blvd
Weslaco, TX 78596
956-447-8408
956-973-9503 FAX
1-888-857-8688
ljzuniga@earthlink.net
www.thearcoftexas.org

Texas
Partners Resource Network Inc.
Janice Meyer
1090 Longfellow Drive, Suite B
Beaumont, TX 77706-4819
409-898-4684 Voice & TDD
409-898-4869 FAX
1-800-866-4726 in TX
txprn@pnx.com
www.PartnersTX.org

Texas
Project PODER
Yvette Hinojosa
1017 N. Main Ave., Suite 207
San Antonio, TX 78212
210-222-2637
210-475-9283 FAX
1-800-682-9747 TX only
poder@tfepoder.org
www.tfepoder.org
San Antonio, Hondo, & Castroville. Cameron, Hidalgo, Willacy, & Starr Counties.

Utah
Utah Parent Center
Helen Post
2290 East 4500 S., Suite 110
Salt Lake City, UT 84117-4428
801-272-1051
801-272-8907 FAX
1-800-468-1160 in UT
upc@inconnect.com
www.utahparentcenter.org

Vermont
Vermont Parent Information Center
Connie Curtin
1 Mill Street, Suite A7
Burlington, VT 05401
802-658-5315 Voice & TDD
802-658-5395 FAX
1-800-639-7170 in VT
vpic@together.net
www.vtpic.com

Virgin Islands
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Virgin Islands

Virginia (CPRC)
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Virginia
Parent Educational Advocacy Training Center
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PAVE/STOMP
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U.S. Military installations; and as a resource for parent centers and others needing information on this subject.

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(CPRC)=Community Parent Resource Center

IL Net Presents

Youth Focus: Implementing IDEA

June 4-6, 2001

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Youth Focus: Implementing IDEA

June 4-6, 2001

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Youth Focus: Implementing IDEA

June 4-6, 2001

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IL NET Presents

Youth Focus: Implementing IDEA

June 4-6, 2001
Cleveland, OH

Training Evaluation Form

In an effort to continue providing the most effective training, please take a few minutes to evaluate this session. Your feedback is important to the project. Thank you.

On a scale from 1 (the lowest rating) to 4 (the highest rating), please rate the performance of the **appropriate trainer**.

1. The trainers' knowledge of the Individual with Disability Education Act?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

2. Please rate the trainers' ability to hold your interest.

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

3. How interactive was the trainers' presentation?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

4. How was the trainers' use of visual aids to reinforce the discussion?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

5. How effective, prepared, and organized were the trainers?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

6. How helpful were the materials in conjunction with the training?

1 (Low) 2 3 4 (High) N/A

7. Was the program content well organized and up-to-date?

1 (Low) 2 3 4 (High) N/A

8. Please rate the degree to which your objectives were met.

1 (Low) 2 3 4 (High) N/A

9. Did the trainers provide enough individual attention?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

10. Were your questions and concerns appropriately addressed by the trainers?

Kathleen Boundy	1 (Low)	2	3	4 (High)	N/A
Elizabeth Hollowell	1 (Low)	2	3	4 (High)	N/A
Maureen Hollowell	1 (Low)	2	3	4 (High)	N/A

11. Please rate the training overall.

	1 (Low)	2	3	4 (High)	N/A

12. What did you like most about this IL NET training session conference?

13. What, if anything, would you change for future IL NET training conferences?

14. Please comment on the hotel's staff, meeting space, accommodations, restaurants, etc.

15. What would you like to see IL NET do as an on-site training?

16. What would you like to see IL NET do as a teleconference?

Thank you

Please return all forms to:

Kristy Langbehn
Project Logistic Coordinator
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